LEADING CONVEYANCING AND EQUITY CASES

INDERMAUR

LAW WORKS

PUBLISHED BY

STEVENS AND HAYNES,

BELL YARD, TEMPLE BAR, LONDON.

HAYNES'S TREATISE ON DAMAGES.

THE LAW AND PRACTICE UNDER THE COMPANIES

THE MARRIED WOMEN'S PROPERTY ACT, 1870.

A MANUAL OF CONSTITUTIONAL HISTORY.

THE LAW AND PRACTICE OF INJUNCTIONS.

THE RULE OF THE LAW OF FIXTURES.

THE PROBATE, LEGACY, AND SUCCESSION DUTIES

STEVENS AND HAYNES' BELL YARD.

THE PRINCIPLES OF EQUITY.

AN EPITOME AND ANALYSIS OF SAVIGNY'S TREA-

AN EPITOME OF LEADING COMMON LAW CASES.

A SELECTION OF LEADING CASES ON THE LAW

A SELECTION OF CASES ON THE LAW OF CON-

AMERICAN LEADING CASES.

AN EPITOME

OF

LEADING CONVEYANCING

AND

EQUITY CASES.

AN EPITOME

OF

LEADING CONVEYANCING

AND

EQUITY CASES;

WITH SOME SHORT NOTES THEREON:

CHIEFLY INTENDED AS

A Guide to "Tudor's Leading Cases on Conveyancing," and

"White and Tudor's Leading Cases in Equity."

BY

JOHN INDERMAUR,

SOLICITOR

(CLIFFORD'S INN PRIZEMAN, MICHAELMAS TERM, 1872),

AUTHOR OF "AN EPITOME OF LEADING COMMON LAW CASES."

LONDON:

STEVENS & HAYNES,

Law Publishers,

BELL YARD, TEMPLE BAR.

1873.

LONDON:
PRINTED BY WILLIAM CLOWES AND SONS,
STAMFORD STREET AND CHARING CROSS.

PREFACE.

In the same way that his 'Epitome of Leading Common Law Cases' is intended by the author as a guide to 'Smith's Leading Cases,' so this Epitome is meant to constitute a stepping-stone to the study of the well-known 'Leading Cases in Equity' by Messrs. White and Tudor, and the 'Conveyancing Cases' by Mr. Tudor, and it contains all the cases set out in those volumes—except some few which have been thought not now of so much practical importance—together with several additional ones. If it will induce the student to explore the mines of learning to be found in those valuable works the author's object will be fully attained.

The Conveyancing and Equity Cases are here epitomized together, because they generally bear such a close relationship, many of those indeed which are given in the Equity volumes, more especially, bearing quite as

much on Conveyancing; thus, in the Final Examination at Michaelmas Term last, under the head of 'Conveyancing,' two questions were asked directly on Messrs. White and Tudor's Equity Cases, and it is also very convenient to consider them together.

J. I.

6, Danes' Inn, Temple Bar, W.C.,
April, 1873.

INDEX TO THE CASES EPITOMIZED.

	PAGE
ACKROYD *v.* SMITHSON	45
ALEXANDER *v.* ALEXANDER ..	6
ALEYN *v.* BELCHIER	7
AYLESFORD (EARL OF) *v.* MORRIS	35
ANCASTER (DUKE OF) *v.* MAYER	38
BASSETT *v.* NOSWORTHY ..	37
BLANDY *v.* WIDMORE	51
BOWLES' (LEWIS) CASE	2
BRAYBROKE (LORD) *v.* INSKIP ..	17
BRACE *v.* DUCHESS OF MARLBOROUGH	37
BRICE *v.* STOKES	55
BRODIE *v.* BARRY	29
CADELL *v.* PALMER	9
CHANCEY'S CASE	50
CHESTERFIELD (EARL OF) *v.* JANSSEN	34
CORBYN *v.* FRENCH	11
CUDDEE *v.* RUTTER	40
DERING *v.* EARL OF WINCHELSEA	26
DYER *v.* DYER	27
ELIBANK (LADY) *v.* MONTOLIEU	31
ELLIOTT *v.* DAVENPORT	16
——— *v.* MERRYMAN	25
ELLISON *v.* ELLISON	21
EYRE *v.* COUNTESS OF SHAFTESBURY	52
FLETCHER *v.* ASHBURNER ..	44
FOX *v.* BISHOP OF CHESTER ..	5
—— *v.* MACKRETH	22
GARDNER *v.* SHELDON	14
GARTH *v.* COTTON	2
GLENORCHY (LORD) *v.* BOSVILLE	20

	PAGE
GORDON *v.* GORDON	54
GRIFFITHS *v.* VERE	10
HANSON *v.* GRAHAM	18
HARDING *v.* GLYNN	8
HOOLEY *v.* HATTON	48
HOWE *v.* EARL OF DARTMOUTH	47
HUGUENIN *v.* BASELEY	24
HULME *v.* TENANT	32
HUNTINGDON *v.* HUNTINGDON ..	32
KEECH *v.* SANDFORD	23
LAKE *v.* GIBSON	19
——— *v.* CRADDOCK	19
LANDSDOWNE *v.* LANDSDOWNE ..	59
LE NEVE *v.* LE NEVE	46
LESTER *v.* FOXCROFT	41
LEVENTHORPE *v.* ASHBIE ..	15
MACKRETH *v.* SYMONS	28
MARSH *v.* LEE	36
MORLEY *v.* BIRD	18
MURRAY *v.* LORD ELIBANK ..	31
PAWLETT *v.* PAWLETT	17
PEACHEY *v.* DUKE OF SOMERSET	57
PENN *v.* LORD BALTIMORE ..	56
PUSEY *v.* PUSEY	43
PYE, *Ex parte*	49
RICHARDSON *v.* LANGRIDGE ..	1
ROBINSON *v.* PETT	23
RUSSEL *v.* RUSSEL	39
SETON *v.* SLADE	40
SHELLEY'S CASE	13
SLOMAN *v.* WALTER	58
SOMERSET (DUKE OF) *v.* COOKSON	43
STAPILTON *v.* STAPILTON ..	54

	PAGE
STAPLETON *v.* CHEALES	17
STRATHMORE (COUNTESS OF) *v.* BOWES	30
SURY *v.* PIGOT	4
TALBOT *v.* DUKE OF SHREWSBURY	50
TOLLET *v.* TOLLET	6
TOPHAM *v.* DUKE OF PORTLAND	7
TYRRELL'S CASE	6
TULLETT *v.* ARMSTRONG ..	33
TYRRINGHAM'S CASE	3
VINER *v.* FRANCIS	14
WILCOCKS *v.* WILCOCKS ..	51
WILD'S CASE	13
WOOLAM *v.* HEARN	41

NOTE.—The edition of 'TUDOR'S LEADING CASES ON CONVEYANCING to which reference is made in this Epitome is the 2nd, published in 1863, and the edition of 'WHITE AND TUDOR'S LEADING CASES IN EQUITY' to which reference is made is the 4th, published in 1872.

AN EPITOME

OF

LEADING CONVEYANCING

AND

EQUITY CASES.

RICHARDSON v. LANGRIDGE.

(*Lead. Cas. Conv.* 4.)

Decided:—That if an agreement be made to let premises so long as both parties live, and reserving a compensation accruing *de die in diem*, and not referable to a year or any aliquot part of a year, it does not create a holding from year to year, but a tenancy at will strictly so called; but if there is a general letting at a yearly rent, though payable half-yearly or quarterly, and though nothing is said about the duration of the term, it is an implied letting from year to year.

Notes.—This case shews the rule for determining when a tenancy is for years and when at will. The leaning of the Courts is always to construe the tenancy as from year to year. Although a tenancy may originally be at will, yet it may afterwards, by payment of rent or other circumstances, be converted into a tenancy for years (see Epitome of Lead. C. L. Cases, pp. 29, 30).

LEWIS BOWLES' CASE.

(*Lead. Cas. Conv.* 27.)

The following were the chief points resolved :—

1. That a tenant in tail after possibility of issue extinct shall *not* be punished for waste.

2. That if a tenant for life fells timber or pulls down the house, the lessor shall have the timber; but if the house falls down, the particular tenant has a special property in the timber to rebuild the house.

3. That a tenant for life *without impeachment of waste* has as great power to do waste and convert it at his own pleasure as has a tenant in tail.

4. That the property in severed trees vests in a tenant for life without impeachment of waste.

GARTH v. COTTON.

(1 *Lead. Cas. Eq.* 697.)

Mr. Garth, the father of the plaintiff, was tenant of lands for ninety-nine years, if he should so long live, *without impeachment of waste, except voluntary waste;* remainder to trustees to preserve contingent remainders; remainder to his first and other sons in tail; remainder to defendant in fee. Mr. Garth (before the birth of a son) and the defendant, according to an agreement, cut down timber and divided the profits between them. The plain-

tiff was afterwards born, and having suffered a recovery, brought this bill against defendant to refund his share of the profits of the timber received by him.

Decided:—That he was so entitled to recover from the defendant.

Notes on these two Cases.—The first of the above two cases is the leading case as to waste and the powers of persons having estates not of inheritance, and contains several important resolutions, and is always referred to on the subject. The latter case is as to that kind of waste called "equitable waste." "Waste" is defined in Mr. Tudor's notes to *Lewis Bowles' Case* as "the destructive or material alteration of things forming an essential part of the inheritance;" and it is either voluntary, which is by the tenant's own act, or permissive, as by letting the premises go to ruin. The remedy for waste is either by action at law or suit in equity for damages for waste already committed, or an injunction may be obtained against future waste; but it has been decided that in cases of *permissive* waste Courts of Equity cannot interfere, but the party injured must be left to his remedy at law. Waste is also divided with reference to the remedy into Legal waste and Equitable waste.

TYRRINGHAM'S CASE.

(*Lead. Cas. Conv.* 101.)

The following were the chief points resolved:—

1. That prescription does *not* make a thing appendant to another unless it agree in nature and quality with it, as a thing corporeal cannot be appendant to another corporeal thing, nor *vice versâ*.

2. That common appendant is of common right, and need not be prescribed for; but that it only belongs to

ancient arable land, and for horses and oxen to plough, and cows and sheep to manure the land.

3. Common appendant is apportionable, but not common appurtenant.

4. Unity of possession of the whole land is an extinguishment of common appendant.

5. Common appendant remains, though a house be afterwards built on the land, or the arable land be afterwards converted into pasture; but in pleading it ought to be prescribed for as appendant to land.

Notes.—The above case is the leading authority as to common and rights of common. In Mr. Tudor's notes to this case a right of common is defined as "a right which one person has of taking some part of the produce of land, while the whole property of the land itself is vested in another." There are properly four kinds of common, viz. (1) Common of pasture; (2) Common of piscary; (3) Common of turbary; and (4) Common of estovers; and to these is sometimes added a fifth sort, viz., Common in the soil. Common of pasture, which is the most usual and important sort, may be either (1) Appendant, (2) Appurtenant, (3) Because of vicinage, or (4) In gross.

The time for which a right of common must be enjoyed to constitute a good title to it is fixed by 2 & 3 Will. 4, c. 71.

SURY v. PIGOT.

(*Lead. Cas. Conv.* 127.)

The following were the chief points determined:—

1. That a watercourse having its origin *ex jure naturæ*, and not from grant or prescription, is not extinguished by unity of possession; but

2. A right of way, having its origin either by grant or prescription, will be extinguished by unity of possession, unless it be a way of necessity, as a way to market or church.

Notes.—This case is the leading authority upon the law of easements. An easement is defined by Mr. Tudor in his notes to the case as "a right which the owner of one tenement, which is called the dominant tenement, has over another which is called the servient tenement, to compel the owner thereof to permit to be done, or to refrain from doing, something on such tenement for the advantage of the former." Easements may arise by express or implied grant, or by prescription, or by Act of Parliament.

The time for which enjoyment of an easement must be had to constitute a good title is fixed by the same statute as applies to rights of common, viz. 2 & 3 Will. 4, c. 71.

FOX v. BISHOP OF CHESTER.

(*Lead. Cas. Conv.* 190.)

Here, whilst the incumbent of the living was *in extremis*, but before he died, the next presentation was sold, but without the privity of, and without any intention to present, the particular clerk to the church when vacant. *Decided*:—That this sale was not void on the ground of simony.

Notes.—But had the sale been when the living was actually vacant, it would have been simoniacal and bad.

TYRRELL'S CASE.

(*Lead. Cas. Conv.* 274.)

Decided:—That there cannot be a use upon a use.

Notes.—The Statute of Uses (27 Hen. 8, c. 10) provided, that where any persons should stand seised of any hereditaments to the use, confidence, or trust of any other persons, &c., the persons, &c., who had any such use, confidence, or trust should be deemed in lawful seisin and possession of the same hereditaments for such estates as they had in the use, trust, or confidence. The above case decided that the statute executing the first use declared, subsequent uses were void; and it was in consequence of this that the Court of Chancery stepped in, and thus arose the modern doctrine of uses and trusts.

ALEXANDER v. ALEXANDER.

(*Lead. Cas. Conv.* 330.)

Here, under a power to appoint amongst children, the appointor had appointed part to children and part to grandchildren. *Decided*:—That the appointment to grandchildren was bad; but that a power may be good and bad in part, and the excess only void, where the execution is complete and the bounds between it and the excess clear.

TOLLET v. TOLLET.

(1 *Lead. Cas. Eq.* 227.)

Here a husband had a power to make a jointure to his wife by deed, and he did it by will, and she had no other

provision. *Decided*:—That Equity will make this defective execution good; but that it would not assist in the case of non-execution of a power.

ALEYN v. BELCHIER.

(1 *Lead. Cas. Eq.* 377.)

Here a power of jointuring was executed in favour of a wife, but with an agreement that the wife should only receive a part as an annuity for her own benefit, and that the residue should be applied to the payment of the husband's debts. *Decided*:—That this was a fraud upon the power, and the execution was set aside, except so far as related to the annuity, the bill containing a submission to pay it, and only seeking relief against the other objects of the appointment.

TOPHAM v. DUKE OF PORTLAND.

(1 *De G. J. & S.* 517.)

Here the donee of a power, appointing portions in pursuance thereof, appointed a double share to one of the objects of the power without any previous communication with him, but the instructions with reference to such double share were that half should be held upon a certain trust; and soon after the appointment the appointee executed a deed settling the moiety accordingly. *Decided*:

—That the purpose of the appointment as to the moiety, though uncommunicated, vitiated it as to that portion, but as to that portion only. The rights of persons entitled in default of appointment under a power, can be defeated only by its *bonâ fide* exercise.

Notes on these four Cases.—These cases are here placed together for convenience as all bearing on the same general subject, the the first as to the result of an excessive execution of a power, the second as shewing that Equity will assist in the case of defective execution of a power, and the remaining two as being both leading authorities as to what acts will be considered frauds upon powers.

With regard to the defective execution of a power relief will be given in Equity in favour of any of the following:—(1) A charity; (2) A purchaser; (3) A creditor; (4) An *intended* husband; (5) A wife; (6) A legitimate child; where in each case the defect is not of the very essence of the power. Notwithstanding the decision in *Tollet* v. *Tollet* that relief will not be given in the case of non-execution of a power, there are two cases in which such relief will be given, viz.: (1) Where the execution has been prevented by fraud; and (2) Where the power is coupled with a trust; and an instance of this latter appears in the case of *Harding Glynn* (*infra*), though the principal decision in that case was on another point.

HARDING v. GLYNN.

(2 *Lead. Cas. Eq.* 946.)

A testator by his will gave personal property to his wife, but *did desire her,* at or before her death, to give the same into and amongst such of his own relations as she should think most deserving and approve of. *Decided:*—

That the wife was only intended to take beneficially during her life, and that so much of the property not disposed of in accordance with the power ought to be divided equally amongst such of the relations of the testator as were his next of kin at the time of his wife's death.

Notes.—In the above case words which merely expressed the wish or desire of the testator were held to constitute a trust, and frequently it is very difficult to determine when and when not a trust will be created by words of that nature. The general rule is, that where property is given absolutely, accompanied with words of recommendation, entreaty, or wish, that the donee will dispose of that property in favour of another, such words shall be held to create a trust; but (1), the words must be so used that upon the whole they ought to be construed as imperative; (2), the subject of the recommendation or wish must be certain; and (3) the objects of the recommendation or wish must be certain. Words of recommendation, &c., will *not* be construed as imperative if an intention appear in any part of the will to give the devisee a right or power to spend the property.

CADELL v. PALMER.

(*Lead. Cas. Conv.* 360.)

Decided:—That a limitation by way of executory devise, which is not to take effect until after the determination of a life or lives in being, and a term of 21 years as a term in gross, and without reference to the infancy of any person, is a valid limitation; a period for gestation to be allowed in those cases in which it actually exists: but not otherwise.

GRIFFITHS v. VERE.

(*Lead. Cas. Conv.* 430.)

Decided : — That a trust by will for accumulation during a life, contrary to the Thellusson Act (39 & 40 Geo. 3, c. 98), is good for 21 years by that statute.

Notes on these two Cases.—In *Cadell* v. *Palmer* the limits of the rule against perpetuities were finally ascertained and marked out. The accumulation of the income of property, and the suspension of all enjoyment of it, might be directed for the same period as the suspension of its alienation or vesting; but in consequence of the extraordinary will of Mr. Thellusson, which provided for the accumulation of the income of his property for a long period, but yet strictly within the time allowed for the creation of executory interests, the stat. 39 & 40 Geo. 3, c. 98, was passed. This statute forbids the accumulation of income for any longer periods than (1) the life or lives of the grantor or grantors, settlor or settlors; or (2), the term of twenty-one years from the death of any such grantor, settlor, devisor, or testator; or (3), during the minority or respective minorities of any person or persons who shall be living, or in *ventre sa mère* at the time of the death of such grantor, devisor, or testator; or (4), during the minority or respective minorities only of any person or persons who under the deed, surrender, will, or other assurance directing such accumulations, would for the time being, if of full age, be entitled to the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated. *Griffiths* v. *Vere* is the leading case upon the construction of this statute, and shews that although the trust for accumulation may exceed the periods allowed by this statute, yet it shall be good for twenty-one years. But it is important to remember that if a direction to accumulate exceeds the limit allowed for the creation of executory interests, it is altogether void and *not* good even for the twenty-one years. The reason is, that this would have been so before the 39 & 40

Geo. 3, c. 98, and that statute is *not* an enabling, but a restraining act only.

Section 2 of 39 & 40 Geo. 3, c. 98, provides that nothing therein contained shall extend to (1) any provision for payment of debts; or (2), any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise; or (3), any direction touching the produce of timber or wood upon any lands or tenements.

CORBYN v. FRENCH.

(*Lead. Cas. Conv.* 456.)

John Brown by his will bequeathed £500 to the trustees of a chapel, to be applied by them towards the discharge of a mortgage on the said chapel. *Decided*:—That this legacy was void under 9 Geo. 2, c. 36.

Notes.—Statute 9 Geo. 2, c. 36 (The Mortmain Act), provided that no land or money to be laid out in purchasing land should be settled for charitable uses unless (1) by deed indented, sealed and delivered in the presence of two or more witnesses; (2), executed twelve calendar months before death of grantor; (3), inrolled in Chancery within six calendar months after execution; and (4), made to take effect in possession immediately from the making, without any reservation or limitation for the benefit of grantor or any person claiming under him. By this statute also in the case of stock it must be transferred six calendar months before the death of the grantor. But in the case of a purchase for valuable consideration actually paid *at or before the making* of the conveyance or transfer, the provisions for execution twelve calendar months before grantor's death, and transfer of stock six calendar months before death, are not to apply. Gifts to either of the two universities, or to the colleges of Eton, Winchester, or West-

minster, for the better support of the scholars upon the foundations of such colleges are excepted from the operation of the statute.

24 Vict. c. 9, does away with the necessity of indenting the deed, and allows of the reservation of a nominal rent and some other reservations, and provides that the assurance shall not be void by reason, in the case of a sale for full and valuable consideration, of such consideration consisting wholly or in part of a rent-charge or other annual payment. But in all reservations allowed by the Act the vendor must reserve the same benefit for his representatives as for himself.

Although this Act allowed the valuable consideration to consist of a rent-charge, yet there was nothing in it to preserve a conveyance reserving such rent from becoming void by the decease of the vendor within twelve calendar months from the date of the deed. 27 Vict. c. 13, therefore provides that any full and valuable consideration, consisting in whole or in part of a rent or other annual payment, shall be as valid as if actually paid at or before the making of the conveyance.

33 & 34 Vict. c. 34, provides that all corporations and trustees holding moneys in trust for any public or charitable purpose may purchase land in accordance with their trust without being deemed to have infringed the Mortmain Act.

34 Vict. c. 13, exempts from the operation of the Mortmain Act gifts and bequests of land or money to purchase lands for the purposes of (1) Parks; (2) School-houses or elementary schools; and (3) Public museums; but provides that the instrument, if voluntary, must be executed twelve calendar months before the death of the testator or grantor, and be enrolled with the Charity Commissioners within six months after coming into operation; and gifts by will are limited to twenty acres for one park, two acres for one museum, and one acre for one school house.

35 & 36 Vict. c. 24, provides for the incorporation of trustees of charities by application to the Charity Commissioners, and for their then becoming a corporate body with perpetual succession, and with power to acquire and hold property; but it expressly provides (s. 1) that nothing therein contained shall be taken or construed to extend, modify, or control any of the provisions of

9 Geo. 2, c. 36, or to make valid any gift, grant, or purchase which would be invalid under that Act.

The above are the most important statutes on the subject of mortmain; but further exceptions to the Mortmain Act exist in favour of sites for schools, literary and scientific institutions, and some other objects.

SHELLEY'S CASE.

(*Lead. Cas. Conv.* 507.)

Decided:—That where the ancestor takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs or the heirs of his body, the word "heirs" is a word of limitation, and not of purchase; so that the ancestor takes the whole estate comprised in the term: that is to say, in the first case, an estate in fee simple; in the second an estate in fee tail.

Notes.—The above "Rule in *Shelley's Case*" applies to equitable as well as legal estates; but where one limitation is legal and the other equitable it does *not* apply.

WILD'S CASE.

(*Lead. Cas. Conv.* 581.)

Decided:—That where there is a devise to a person and his children or issue, and he has no issue at the time of the devise, there such person will take an estate tail.

Notes.—This decision is known as the "Rule in *Wild's Case*," and the reason of it is, that as the devisor evidently intended that

the devisee's children should take, and they cannot take as immediate devisees, for they are not in existence, nor by way of remainder, because that was not intended; the words shall be taken as words of limitation.

GARDNER v. SHELDON.

(*Lead. Cas. Conv.* 541.)

Decided:—That a devise to B. after the death of A. gives A. an estate for life by implication, *if B. be heir-at-law* of testator; but no estate if he be not heir-at-law.

An heir-at-law cannot be disinherited except by necessary implication.

Notes.—The reason of the above decision is, that if B. is not the heir-at-law, it might possibly be considered that the testator intended that during A.'s life the property should descend to his heir-at-law; but if the subsequent devise be to the heir-at-law, it could not be so considered. However, even in this case no estate by implication will arise if there be a residuary devise, for then it might be considered that it was meant that the residuary devisee should take.

VINER v. FRANCIS.

(*Lead. Cas. Conv.* 702.)

Here a testator bequeathed unto the children of his late sister the sum of £2000, to be equally divided among them, and the question was, what children should take. *Decided*:—That those children should take who were living at the death of the testator.

Notes.—It may be useful here to state shortly the rules for construction of testamentary gifts to children:—

(1) That an immediate gift to children, whether of a living or a deceased person, comprehends all those living at testator's death, and those only.

(2) That where a particular interest is carved out, with a gift over to the children of any person, such gift will embrace not only those living at testator's death, but all who come into existence before the period of distribution.

(3) That where the period of distribution is postponed until the attainment of a given age by the children, the gift will apply to all who come into existence before the first child attains that age.

(4) That where there is an immediate gift to children by will, and at the period when distribution takes place there are no children in existence, all the children born at any future period will take.

(5) The words "to be born" will have the effect of extending the gift to all the children who shall ever come into existence. (2 Jarman on Wills, 3rd edition, 142, 165.)

LEVENTHORPE v. ASHBIE.

(*Lead. Cas. Conv.* 763.)

A. devised a term of years to B. and the heirs male of his body begotten. *Decided*:—That B. was absolutely entitled to the term, and that on his death it went to his executors.

Notes.—It is now well established, in accordance with the above case, that a bequest to a person of chattels, whether real or personal, in such terms as would in the case of a devise of real estate have conferred upon him an estate tail, will as a general rule give

him an absolute interest, which on his death will go, not to his heir in tail, but to his personal representative.

ELLIOTT v. DAVENPORT.

(*Lead. Cas. Conv.* 803.)

Testatrix by her will, bequeathed unto Sir William Elliott, his executors, administrators, and assigns, the sum of £400 which he owed her, provided that he should thereout pay several sums to his children; and she directed her executors to deliver up the security and not to claim any part of the debt, but to give such release as the said Sir William Elliott should think fit. Sir W. Elliott died in the lifetime of testatrix.

Decided:—That this was a lapsed legacy; and it was admitted on both sides and agreed to by the Court, that the mere addition of the words "executors, administrators, and assigns," will not prevent a lapse, for they are but surplusage.

Notes.—The same doctrine applies to a limitation to a man "and his heirs." A mere declaration that a gift shall not lapse will have no effect if there be no substitution for the person dying in testator's lifetime; *but if, together with such a declaration,* the gift is to a person and his executors, &c., this will prevent a lapse. The intention of substitution also will be implied, and a lapse thus prevented, where there is a gift to a person "*or*" his personal representatives.

It must be borne in mind that by 1 Vict. c. 26, ss. 32 & 33, no lapse is to occur (1) in the case of the devise of an estate tail where any issue are living at testator's death who would be inheritable under such entail, and (2) in the case of a devise or bequest to a child or other issue of the testator who dies leaving issue living at testator's death.

LORD BRAYBROKE v. INSKIP.

(*Lead. Cas. Conv.* 876.)

Decided:—That by a devise in general terms a trust estate will pass, unless an intention to the contrary can be inferred from expressions in the will, or the purposes or objects of the testator.

PAWLETT v. PAWLETT.

(*Lead. Cas. Conv.* 720.)

Lord Pawlett, by settlement, limited certain lands for the purpose (amongst other things), of raising portions for younger children, payable at twenty-one or marriage. One of the daughters died under twenty-one, and unmarried, and her administratrix instituted this suit to obtain payment of her portion. *Decided*:—That her portion should not be raised for the benefit of her administratrix though it would have been otherwise in the case of a legacy.

STAPLETON v. CHEALES.

(*Lead. Cas. Conv.* 724.)

Decided:—(1) That if a legacy is bequeathed to an infant "payable" or "to be paid" at the age of twenty-one years, it is a vested interest, the time of payment only being postponed, so that it shall go to the personal representatives of the infant, though he die before that age.

(2) But if a legacy is bequeathed to an infant "at" twenty-one, or "if" or "when" he shall attain the age of twenty-one, this is a contingency, and if the legatee dies before the appointed age the legacy is lapsed and shall not go to the personal representatives, *unless interest is given in the meantime.*

HANSON v. GRAHAM.

(*Lead. Cas. Conv.* 726.)

Decided:—That the word "when" standing alone and unqualified in a will is conditional; but that it may be controlled by expressions and circumstances, so as to postpone *not* the vesting but the payment only, as where the interest of the legacy in the interval is directed to be laid out at the discretion of the executors for the benefit of the legatees.

Notes on these three Cases.—The case of *Pawlett* v. *Pawlett* goes to shew that when the party to be benefited dies a portion shall not be raised, though a legacy under similar circumstances would; while the two latter cases shew when it is that a legacy will be considered an actually vested interest, with payment only postponed, and when it will be but a contingency.

MORLEY v. BIRD.

(*Lead. Cas. Conv.* 778.)

Decided:—That notwithstanding the leaning of the Court to a tenancy in common, in preference to a joint

tenancy, an interest simply given to two or more, either by way of legacy or otherwise, is joint, unless there are words of severance, as "equally among," or words to the like effect, or unless an inference of that sort arises in Equity from the nature of the transaction, as in partnership, &c.

LAKE v. GIBSON.
LAKE v. CRADDOCK.

(1 *Lead. Cas. Eq.* 177.)

Here five persons purchased West Thorock Level from the commissioners of the sewers, and the conveyance was to them as joint tenants in fee, but they contributed rateably to the purchase, which was to the intent of draining the level. Several of them died.

Decided:—That they were tenants in common in equity, for the purchase was for the purpose of a joint undertaking; and though one of these five persons deserted the partnership for thirty years, yet he was afterwards let in on terms.

Notes on these two Cases.—Morley v. *Bird* decides that where property is given to several without anything else, that must be a joint tenancy; and *Lake* v. *Gibson* and *Lake* v. *Craddock* shew the leaning of Equity to a tenancy in common, and that a purchase for a joint undertaking, though the conveyance be to the parties as joint tenants, will constitute a tenancy in common; and this decision forcibly illustrates the maxim, "Equality is equity." Although, if persons purchase an estate and pay equal portions of the purchase-money, and take a conveyance in their joint names, this is a joint tenancy (unless for the purpose of some joint undertaking), yet if the purchase-money is paid in *un*equal

proportions, there will be no survivorship, but they hold the estate in proportion to the sum which each advanced; and in the case of a mortgage to two or more jointly, even though the money is advanced equally, there is no survivorship, but the survivor or survivors will be a trustee or trustees for the personal representatives of the deceased. And the purchase by joint mortgagees of the equity of redemption is unlike an ordinary joint purchase, for they will in Equity still be tenants in common, because the purchase is founded on the mortgage.

LORD GLENORCHY v. BOSVILLE.

(1 *Lead. Cas. Eq.* 1.)

Here Sir Thomas Pershall devised real estates to trustees upon trust, upon the happening of the marriage of his granddaughter Arabella Pershall, to convey the said estates with all convenient speed to the use of the said Arabella Pershall for life, remainder to husband for life, remainder to the issue of her body, with remainder over. *Decided:*—That though Arabella Pershall would have taken an estate tail had it been the case of an immediate devise, yet that the trust being executory, was to be executed in a more careful and more accurate manner, and that a conveyance to Arabella Pershall for life, remainder to her husband for life, with remainder to their first and every other son, with remainder to the daughters, would best serve the testator's intent.

Notes.—The above case clearly shews the distinction between executed and executory trusts. In Snell's 'Principles of Equity' an executed trust is defined as one "when no act is necessary to be done to give effect to it, the trust being finally declared

by the instrument creating it," and an executory trust as "a trust raised either by stipulation or direction in express terms, or by necessary implication to make a settlement or assurance to uses or upon trusts which are indicated in, but do not appear to be finally declared by, the instrument containing such stipulation or direction." The distinction between these two kinds of trusts forms the best illustration that can be given of the true meaning of the maxim, "Equity follows the Law;" for as regards an executed trust, the same construction will be put on it in Equity as at Law; but as regards an executory trust only, where an analogy plainly subsists, and there is no equitable reason to deviate from the rule. A very material distinction should here be noted between trusts executory in marriage articles and trusts executory in wills; for in the former, from the nature of the transaction, the intention of the parties can always be presumed, whilst in the latter it can only be gathered from the words used in the will; and therefore in wills very frequently a construction will be put on such a trust according to the literal meaning, though if the same words had been used in marriage articles, the construction would have been different.

With regard to marriage articles it may be observed, that where there are articles entered into before marriage, and after marriage a settlement is executed, the articles govern; but where both the articles and the settlement are made before the marriage, the parties are concluded by the settlement, unless it recites that it is made in pursuance of the articles, when it will be made subservient to them (see *Legg* v. *Goldwire*, 1 Lead. Cas. Eq. 17).

ELLISON v. ELLISON.

(1 *Lead. Cas. Eq.* 245.)

Decided :—That there is this distinction as to volunteers, viz.: The assistance of the Court cannot be had without consideration, to constitute a party *cestui que trust*, as upon a mere voluntary covenant to transfer stock; but

if the legal conveyance is *actually made* constituting the relation of trustee and *cestui que trust*, as if the stock is actually transferred, though without consideration, the equitable interest will be enforced.

Notes.—Where a settlor actually constitutes himself a trustee for volunteers, a Court of Equity will enforce the trusts declared; and such cases as these must be carefully distinguished from those in which it is intended to confer upon persons the whole interest without trustees; thus, if a person disposes of property informally in favour of a volunteer, *no* assistance will be given in Equity, but if he simply declares himself to be a trustee of that property, a complete trust is created, and the Court will act upon it.

A conveyance or a declaration of trust in favour of a volunteer *cannot* be revoked or avoided, *except* that in the case of an assignment of property in favour of creditors it is revocable until the creditors have assented to the trust, and this whether they are individually named or not.

FOX v. MACKRETH.

(1 *Lead. Cas. Eq.* 115.)

In this case, the defendant Mackreth, being a trustee for the plaintiff Fox of certain property, agreed to buy such property of him for a sum of £39,500, and such agreement was duly carried out, by conveyances being subsequently executed. Mackreth immediately afterwards sold the property to a Mr. Page for £50,500, and the plaintiff discovering this, filed his bill to have advantage of it. *Decided:*—That Mackreth having purchased the estate from his *cestui que trust* while the relation of trustee

and *cestui que trust* continued to subsist between them, and without having communicated to the plaintiff the value of the estate acquired by him as trustee, he must be and was declared a constructive trustee as to the sums produced by the sale to Mr. Page.

Notes.—The true ground of the above decision was *not* the under-value, but, as stated above; but it must be noted that a trustee can purchase from a *cestui que trust* who is *sui juris*, and has discharged him from all the obligations which attached to him as trustee; but even then any such transaction will be viewed by the Court with jealousy.

KEECH v. SANDFORD.

(1 *Lead. Cas. Eq.* 44.)

Here the lease of Rumford Market had been bequeathed to B. in trust for an infant. B. before the expiration of the term applied to the lessor for a renewal of the lease for the benefit of the infant, and this was refused. B. then got a lease made to himself. On this suit being brought by the infant to have the lease assigned to him, *decided:* That B. was a trustee of the lease for the infant and must assign the same to him.

ROBINSON v. PETT.

(2 *Lead. Cas. Eq.* 238.)

Decided:—That the Court never allows an executor or trustee for his time and trouble; neither will it alter the

case that the executor renounces, and yet is assisting to the executorship; and this, even though it appears that the executor or trustee has benefited the trust to the prejudice of his own affairs.

Notes on these two Cases.—The above two cases are here placed to immediately follow *Fox* v. *Mackreth*, as although that case certainly bears on a subject that they do not, viz., *purchases* by a trustee, yet they all in common are decisions on the position of a trustee, and go to shew that he can make no profit from his trust. If he does so, he becomes a constructive trustee of that profit for his *cestui que trust*. A fair contract between trustees or executors and their *cestuis que trust* to receive some compensation for acting is, however, good.

HUGUENIN v. BASELEY.

(2 *Lead. Cas. Eq.* 556.)

Here the plaintiff, Mrs. Huguenin, whilst a widow, constituted the defendant her agent, and he undertook the management of her property and affairs; and she afterwards executed a voluntary settlement in favour of him and his family. Mrs. Huguenin having now married, this suit was brought by her and her husband for the purpose of setting aside the settlement. *Decided*:—That the settlement should be set aside as obtained by undue influence and abused confidence in the defendant as an agent undertaking the management of her affairs; upon the principles of public policy and utility, applicable to the relation of guardian and ward.

Notes.—The above case forms an instance of a constructive fraud, and proceeds upon the ground of the confidential relation existing between the parties; for it is a rule, that when any such confidence exists, and the party in whom it is reposed makes use of it to obtain an advantage to himself at the expense of the party confiding, he will never be allowed to retain any such advantage, however unimpeachable such transaction would have been if no such confidence had existed.

ELLIOTT v. MERRYMAN.

(1 *Lead. Cas. Eq.* 59.)

Decided:—(1) That where real estate is devised to trustees upon trust to sell for payment of debts generally, or charged with payment of debts, the purchaser is *not* bound to see that the money is rightly applied; but if the real estate is devised upon trust to be sold for the payment of certain debts, mentioning to whom in particular those debts are owing, the purchaser is bound to see that the money is applied in payment of those debts.

(2) But that a purchaser of leasehold or other personal estate is never liable to see to the application of the purchase-money—except in cases of fraud—because the executors are the proper persons that by law have the power to dispose of a testator's personal estate.

Notes.—It is now enacted by 22 & 23 Vict. c. 35, s. 23, as follows:—"The *bonâ fide* payment to, and the receipt of, any person to whom any *purchase or mortgage money* shall be payable upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application or being answer-

able for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security." It is also enacted, by 23 & 24 Vict. c. 145, s. 29, as follows:—"The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise of, any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof."

This latter Act is more extensive than the former; but it must be remembered that its provision is *not* retrospective (see sect. 36), whilst the former appears to be. By reason of the joint operation of these enactments the above case has now little *practical* importance.

DERING v. EARL OF WINCHELSEA.

(1 *Lead. Cas. Eq.* 100.)

Here two different bonds had been given to the Crown for the due performance by one Thomas Dering of a certain office, and he becoming in arrear to the Crown, one of the bonds was put in suit, and judgment recovered on it. This suit was then instituted against those who had given the other bond claiming a contribution. *Decided*:—That though the sureties were bound by different instruments, they must contribute, for the doctrine of contribution amongst sureties is not founded in contract, but is the result of general equity, on the ground of equality of burthen and benefit.

Notes.—And this right of a surety to enforce contribution against co-sureties will not be affected by his ignorance at the

time he became surety that they also were co-sureties. Courts of Common Law can also compel contribution between sureties; but there is this important distinction between contribution in Equity and at Common Law: in Equity the contribution is with reference to the time when it is sought to be enforced, but at Common Law with reference to the number of sureties originally liable. Thus: A., B., and C. are sureties, and A. is forced to pay the whole amount. B. has become insolvent, nevertheless at Common Law A. can only recover a third from C., though in Equity he can recover half. Further, if a surety dies, contribution can be enforced in Equity as against his representatives; but at Common Law the surviving sureties only can be sued (see *Batard* v. *Hawes*, 2 Ell. & B. 287).

DYER v. DYER.

(1 *Lead. Cas. Eq.* 203.)

Here one Simon Dyer paid the purchase-money for certain property, and took the conveyance to himself, his wife Mary, and a son William, jointly. Simon Dyer survived his wife and then died, devising all his interest in these premises to the plaintiff, who filed his bill against the son William, insisting that as the purchase-money was all paid by Simon Dyer, the son William, the defendant, was but a trustee.

Decided:—That though if no relationship existed there would be a resulting trust in favour of the person paying the purchase-money; yet the circumstance of the nominee being the child of the purchaser, operated to rebut the resulting trust, and the defendant took the property beneficially as an advancement from his father.

Notes.—The presumption of advancement does not only arise in favour of a child, but also in favour of a wife. Where a conveyance is taken in the name of a stranger, and therefore by equitable presumption a resulting trust arises, such resulting trust may be rebutted by parol evidence shewing that the person who paid the purchase-money really intended that the person in whose name the conveyance is taken should take the property for his own benefit.

MACKRETH v. SYMONS.

(1 *Lead. Cas. Eq.* 289.)

Decided:—(1) That a vendor's lien for unpaid purchase-money, unless relinquished, exists against all persons except purchasers for valuable consideration without notice having the legal estate.

(2) That another security taken and relied on may, according to its nature and the circumstances under which taken, be evidence of relinquishment, but the proof is on the purchaser.

Notes.—A vendor's lien may be defined as that hold or charge on property which a person has who has sold the same, but has not received the purchase-money, or the whole of it. This lien exists even though the deed expresses that the consideration is paid, and a receipt is indorsed on it. It must be borne in mind that (as decided in the above case) the taking of a security is only an evidence of relinquishment by the vendor of his lien; and as a general rule, the taking of a mere personal security will not deprive the vendor of his lien, though, if he take a totally distinct and independent security, the lien is usually lost.

The amount of the purchase-money for which a vendor's lien existed was, of course, payable out of the vendee's general personal estate; but now, in consequence of 30 & 31 Vict. c. 69, s. 2, it is primarily payable out of the land in respect of which it exists.

BRODIE v. BARRY.

(2 *V. & B.* 127.)

Here property was bequeathed to a person who was testator's heiress to heritable property in Scotland, a disposition of which was made by the will, but in a manner not conformable to the law of Scotland, so that it did not pass under the will, and the question was whether the heiress should be allowed both to take the benefits given to her by the will and the property, which being thus informally dealt with, descended to her as heir-at-law, or whether she should be put to her election. *Decided*:—That the Scotch heiress could *not* take both the benefits given her by the will and the property, which being informally dealt with would descend to her; but that she must elect between them.

Notes.—The doctrine of election is stated, in Snell's 'Principles of Equity,' to originate in inconsistent or alternative donations, and it consists in the choosing by a person between two rights where there is an intention, express or implied, that they shall not both be enjoyed. The above case is given here in preference to those of *Noys* v. *Mordaunt* and *Streatfield* v. *Streatfield*, set out in Messrs. White and Tudor's work, as it forms a very simple and striking example of the doctrine.

It is important to remember that when a person elects against an instrument—that is, refuses to give up his own property—he does not always absolutely forfeit the benefits given him by it, but only so much thereof as will compensate the disappointed party. Thus, if a testator gives to A. £1000, and to B. a house of small value to which A. is entitled, and A. refuses to conform to the testator's will, he is only bound to give up so much of the £1000 as the house is worth, so as to compensate B.

COUNTESS OF STRATHMORE v. BOWES.

(1 *Lead. Cas. Eq.* 406.)

Lady Strathmore, during her engagement of marriage with one Mr. Grey, conveyed and assigned her property to trustees for her separate use, with his approbation. Afterwards hearing that defendant Bowes had fought a duel on her account, she married him. Bowes had no notice of the settlement. *Decided*:—That a conveyance by a wife, whatsoever may be the circumstances, and even the moment before the marriage, is *primâ facie* good, and becomes bad only upon the imputation of fraud, and that if a woman in the course of a treaty of marriage with her makes, without notice to the intended husband, a conveyance of any part of her property, it will be set aside because affected with that fraud, but that this case was different, the settlement indeed being with the sanction of the then intended husband, and so the settlement here was established.

Notes.—A secret conveyance by a woman pending marriage is a fraud on the husband's marital rights, although he did not know she had any property.

There is one exception to the general rule laid down in *Countess of Strathmore* v. *Bowes*, and that is in the case of the previous seduction by a man of his intended wife; for it has been held that, as the husband has by his conduct before the marriage put it out of the wife's power to make any stipulation for settlement of her property, retirement being impossible on her part, a secret settlement made by her shall not be set aside. It was also supposed that another exception existed in the case of a fair settlement by a

widow upon her children by a former marriage, but the authorities do not appear to warrant this, and it cannot therefore be considered as an exception.

LADY ELIBANK v. MONTOLIEU.

(1 *Lead. Cas. Eq.* 424.)

Decided:—That a married woman may, by her next friend, maintain a suit in the Court of Chancery to assert her equity to a settlement on herself and children out of property to which she is entitled; and here the settlement on marriage being inadequate, a further settlement decreed in favour of the plaintiff Lady Elibank.

MURRAY v. LORD ELIBANK.

(1 *Lead. Cas. Eq.* 431.)

This case arose out of the foregoing one. After decree in that suit, but before any settlement in pursuance thereof, Lady Elibank died intestate, and this bill was filed by her infant children for the carrying out of the settlement in their favour notwithstanding her death. *Decided*:—That the wife obtained by the decree in the suit of *Lady Elibank* v. *Montolieu* a judgment for the children, liable to be waived if she thought proper; otherwise to be left standing for their benefit at her death.

Notes.—It must, however, be remembered that the equity to a settlement is strictly personal to the wife, and that the children

have no independent equity of their own; so that if Lady Elibank had died before decree her children would not have been entitled to any settlement. If the settlement on a woman's marriage is perfectly adequate, no further settlement will be decreed; but when a settlement is decreed, the amount to be settled is *usually and in the absence of special circumstances* one-half of the property. If after marriage a settlement of property is made upon the wife voluntarily in consideration of her equity to a settlement, it is good as against creditors if the Court would, under the circumstances, have decreed one, had application been made to it for the purpose.

The wife's equity to a settlement forms a good example of the maxim, "He who seeks equity must do equity."

HULME v. TENANT.

(1 *Lead. Cas. Eq.* 481.)

This bill was filed by the obligee of a bond entered into by the defendants (husband and wife) against the husband and wife, and her surviving trustee, to recover the sums secured out of the wife's separate estate. *Decided*:—That the bond of a married woman jointly with her husband shall bind her separate property.

HUNTINGDON v. HUNTINGDON.

(2 *Lead. Cas. Eq.* 1010.)

Here the Countess of Huntingdon joined with her husband, the Earl, in a mortgage of her estate of inheritance, for his purposes, and the Earl covenanted to pay the

money. He did pay the money, but took an assignment to himself. The mortgage being for a term of years, the Earl devised it for the benefit of his younger children. The Countess died, and also the Earl, and the eldest son filed a bill claiming as heir to the Countess to have the estate freed from the mortgage and the claims of the younger children. *Decided*:—That he was so entitled, as the wife's estate was but as surety.

TULLETT v. ARMSTRONG.

(1 *Beav.* 1.)

Here a testator gave certain property to trustees in trust for his wife for life, with remainder to the defendant Mrs. Armstrong (then unmarried) for life in such manner *that it should not be anticipated*, and that no husband should acquire any control over it, and the questions were as to the effect of a gift to the separate use of a woman unmarried at the time, and the effect of the clause against anticipation. *Decided*:—That both the separate use clause and the restriction against alienation became effectual on the subsequent marriage, and that such a restraint against alienation is annexed to the separate estate only, and the separate estate has its existence only during coverture, but that whilst the woman is discovert the separate estate, whether modified by restraint or not, is suspended, and has no operation, though it is capable of arising upon the happening of a marriage.

Notes on these three Cases.—Although the separate estate of a married woman may frequently be made liable for her debts, as shewn in *Hulme* v. *Tenant*, yet no personal decree can be made against her. As a general rule, this separate estate, unless restrained from anticipation, will be liable for "all debts, &c., which she expressly charges, or which, judging from the nature thereof, it may be fairly inferred that she intended to charge, on her separate estate." Thus, a promissory note signed by her will bind it; and if she of her own accord employs a solicitor, it will be liable for his charges. In considering the liability of the wife's separate estate, statute 33 & 34 Vict. c. 93, ss. 12, 13, and 14, must be borne in mind.

The case of *Huntingdon* v. *Huntingdon* goes to shew, that though the wife's separate estate may have been charged, yet when it is but for the purposes of the husband, it is but as surety for him, and he must ultimately discharge the liability, notwithstanding the way in which the estate was dealt with afterwards. Thus, in that case, the Earl of Huntingdon, on paying off the money, took an assignment of the property to himself, and yet the heir of the wife was held to be entitled to it. But that case must be taken with this limitation, or rather addition, viz., that if the wife's intention clearly appears to have been to alter the limitation of the equity of redemption, effect will be given to that intention. No such intention appeared in that case.

Tullett v. *Armstrong* is given above as establishing and plainly shewing the effect of the now usual clause against anticipation.

EARL OF CHESTERFIELD v. JANSSEN.

(1 *Lead. Cas. Eq.* 541.)

In this case one Mr. Spencer, at the age of 30, had borrowed £5000 of defendant on the terms of paying £10,000 if he survived his grandmother, from whom he had large expectations, and who was then of the age of

78 years, and nothing if he did not. He did survive her, and after her death gave a bond for payment of the £10,000, and paid a part. Mr. Spencer having since died, his executor brought this suit to be relieved against this contract as usurious and unconscionable. *Decided*:—Not usurious, and (without deciding whether relief would have been given against the original transaction) no relief could now be given, Mr. Spencer having by his acts after his grandmother's death ratified the transaction.

EARL OF AYLESFORD v. MORRIS.

(*Weekly Notes*, 1872, *p.* 224; *Weekly Notes*, 1873, *p.* 52 (*on appeal*).)

Here the plaintiff, soon after he came of age, and whilst his father was living, borrowed from the defendant, who was a money-lender, sums amounting to about £7000, for which he gave bills at 60 per cent. These bills were renewed; and after the death of plaintiff's father, defendant sued plaintiff on the bills, and this suit was brought for an injunction to restrain the actions on payment by the plaintiff of the sums advanced and interest at 5 per cent. *Decided*:—That the Plaintiff was entitled to the relief sought, and that the fact of his being an actual tenant in tail in remainder (as the case was) instead of being merely an expectant heir made no difference.

Notes on these two Cases.—Chesterfield v. *Janssen* is the leading case on that branch of constructive fraud designated in Snell's

'Principles of Equity' as constructive frauds, as being unconscientious or injurious to the rights of third parties. For although in hat case no relief was given because of confirmation by Mr. Spencer of the transaction, yet the particular subject of bargains with expectant heirs was there much considered. As to these, the rule in Equity is to set them aside, unless the purchaser can shew that he paid full consideration, and that the bargain being made known to those to whose estate the expectant was hoping to succeed, was approved of by them. This relief thus given to expectant heirs was formerly also given to remaindermen and reversioners, but is so no longer, 31 Vict. c. 4, s. 1, enacting that "No purchase, made *bonâ fide* and without fraud or unfair dealing, of any reversionary interest in real or personal estate shall hereafter be opened or set aside merely on the ground of undervalue;" and by sect. 2 the word "purchase" used in sect. 1 has an extended meaning.

The case of *Earl of Aylesford* v. *Morris* is the most recent decision on the subject of bargains from expectant heirs; and whilst the former principles and rules on the subject are confirmed, they seem also to be a little extended, for in that case the plaintiff was not simply an expectant heir, but he was an actual tenant in tail in remainder, and yet it was held that this made no difference, and relief was given.

MARSH v. LEE.

(1 *Lead. Cas. Eq.* 611.)

Decided:—That if a third mortgagee having advanced his money, *without notice of a second mortgage*, afterwards buy in a first mortgage or statute, yet the third mortgagee having obtained the first mortgage or statute, and having the law on his side and equal equity, he shall thereby squeeze out and gain priority over the second mortgagee.

BRACE v. DUCHESS OF MARLBOROUGH.

(2 *P. Wms.* 491.)

Decided:—That if a judgment creditor, or creditor by statute or recognizance, buys in the first mortgage he shall *not* tack this to his judgment, &c., and thereby gain a preference, *for he did not advance his money on the immediate credit of the land;* but if a first mortgagee lends a further sum to the mortgagor upon a statute or judgment he shall retain against a mesne mortgagee till both the mortgage and statute or judgment be paid.

Notes on these two Cases.—In the latter of the above two cases the doctrine of tacking was much considered, and a number of rules on the subject were stated, but the points above set out are the most important to remember in connection with the decision in *Marsh* v. *Lee.* It is very important to know accurately when tacking will be allowed, and when not, and the student will be more likely to remember the distinctions if he bears in mind that tacking is *not* allowed when the money was not originally advanced on the immediate credit of the land.

The doctrine of tacking forms a good illustration of the maxim, "Where the equities are equal the law shall prevail;" for the third mortgagee being without notice of the intervening incumbrance, has as good a title in conscience as such incumbrancer, and by getting hold of the first mortgage, &c., he has the law on his side.

BASSETT v. NOSWORTHY.

(2 *Lead. Cas. Eq.* 1.)

This bill was filed by an heir-at-law against a person claiming as purchaser from a devisee under the will of his

ancestor to discover a revocation of the will, and the defendant pleaded that he was a purchaser for valuable consideration *bonâ fide*, without notice of any revocation.

Decided:—That this plea was good, and upon proof of it, the bill was dismissed.

Notes.—The above case is inserted here so as to follow those on the doctrine of tacking, as it forms another illustration of the maxim, "Where the equities are equal the law shall prevail."

As an extension of the above case, it should be noted that where a person has the best right to call for the legal estate, he will be entitled to the protection of Equity in the same way as if he had actually obtained it.

DUKE OF ANCASTER v. MAYER.

(1 *Lead. Cas. Eq.* 630.)

Decided:—That the general personal estate is primarily liable to the payment of the debts of the testator, unless exempted by express words or by necessary implication.

Notes.—It may be useful to give here a short statement of, first, the order in which assets are applied in payment of debts; and, secondly, when the general personal estate is not the primary fund for that purpose.

Firstly. The order is as follows:—

(1) The general personal estate.
(2) Estates devised for the particular purpose of paying debts.
(3) Estates descended.
(4) Property devised or bequeathed to particular devisees or legatees, but charged with payment of debts.
(5) (*a*) General legacies; (*b*) Lands comprised in a residuary devise; (*c*) Specific legacies and specifically devised

lands. (This is in accordance with the decision in *Hensman* v. *Fryer*, L. R. 3 Ch. Ap. 420; but formerly it was considered that these assets were only applicable in the order named. See hereon the observations of Mr. Snell in his 'Principles of Equity,' 2nd ed. pp. 234, 235.)

(6) Property over which the person whose estate is being administered has exercised a general power of appointment.

Secondly. The personal estate is *not* the primary fund for payment of debts in the following cases:—

(1) Where it is exempted by express words.

(2) Where it is exempted by testator's manifest intention; and on this point the fact that the testator has charged his real estate is not alone sufficient, but he must also have shewn that it was his purpose that the personal estate should not be applied.

(3) Where the debt forming the charge or incumbrance is in its own nature real.

(4) Where the debt was not contracted by the person whose estate is being administered, but by some one else from whom he or his vendor took it, as in the case of a mortgage created by an ancestor.

(5) In cases coming within the provisions of 17 & 18 Vict. c. 113, or 30 & 31 Vict. c. 69.

RUSSEL v. RUSSEL.

(1 *Lead. Cas. Eq.* 674.)

Here a lease had been pledged with the plaintiff by a person since bankrupt, and the plaintiff now brought his bill against the assignees for a sale of the leasehold estate.

Decided:—That the deposit created a good equitable mortgage.

Notes.—An equitable mortgage by deposit of title deeds is now of common occurrence, but the above case is cited to shew that such a transaction is good, notwithstanding the 4th section of the Statute of Frauds (29 Car. 2, c. 3)—a point which was previously, and with reason, much doubted.

CUDDEE v. RUTTER.

(1 *Lead. Cas. Eq.* 786.)

Decided:—That a bill in equity will not lie for specific performance of an agreement to transfer a certain sum of South Sea Stock, for there is no difference between that and any other like sum of stock, and no damage occasioned by the non-performance of the agreement specifically, if the difference is paid.

SETON v. SLADE.

(2 *Lead. Cas. Eq.* 513.)

Here plaintiff had agreed to sell certain property to defendant, and it was understood that he should make a good title in two months, and defendant gave him a notice that if he did not do so he should insist on the return of his deposit with interest. The plaintiff, however, only delivered his abstract a few days before the expiration of the two months, which the defendant then received and kept without objection. *Decided*:—That the vendee upon construction of the circumstances was not entitled to insist on time as of the essence of the contract, and so specific performance decreed.

LESTER v. FOXCROFT.

(1 *Lead. Cas. Eq.* 768.)

Here a certain *parol* contract had been made for the pulling down by the plaintiff of certain houses and the building up of others, and the granting of a lease thereof to him, and he had in pursuance and part performance of such *parol* contract pulled down the houses and built some of the others. The plaintiff brought this bill for specific performance of the contract. *Decided*:—That the plaintiff was entitled to a decree for specific performance notwithstanding the Statute of Frauds, because of the acts of part performance on his part.

WOOLAM v. HEARN.

(2 *Lead. Cas. Eq.* 484.)

Decided:—That though a defendant resisting specific performance may go into parol evidence to shew that by fraud the written agreement does not express the real terms, a plaintiff cannot do so for the purpose of obtaining specific performance with a variation.

Notes on these four Cases.—These cases are placed together as all relating to the subject of specific performance. *Cuddee* v. *Rutter* plainly shews the nature of the contracts of which specific performance will be granted, viz., those for the breach whereof damages will not fully compensate; and *Seton* v. *Slade* shews that though terms may not have been strictly complied with, yet specific performance may be decreed. But in such a case the Court will take care to make proper compensation. And this principle of decreeing specific performance with compensation is applied where the vendor seeks specific performance and has not exactly

the interest he contracted to sell, but the difference is not material; but a purchaser cannot be forced to accept lands of a different tenure to what he contracted to buy, for this is not considered a matter for compensation.

The decision in *Lester* v. *Foxcroft* is upon the ground, that after a person has been allowed to do acts in part performance, it would be a fraud on the part of the person who has allowed him to do such acts not to perform his part of the contract. Acts to be a part performance must be exclusively referable to the agreement, and such acts as payment of purchase-money, delivery of abstract, and the like, are *not* sufficient part performance; but letting a purchaser into possession is.

There are also two other cases in which specific performance of a parol contract will be decreed; and they are stated by Mr. Snell in his 'Principles of Equity' to be (1) where it is fully set forth in the bill, and is confessed by the answer of the defendant, who does not insist on the statute as a defence; and (2) where the agreement was intended to be reduced into writing according to the statute, but that was prevented by the fraud of one of the parties.

With regard to the decision in *Woolam* v. *Hearn*, though good as a general rule, yet it must be noted that there are three cases in which a plaintiff may obtain specific performance with a subsequent parol variation, and they are of a similar nature to the three cases above stated in which specific performance will be decreed of an original parol contract, viz. (1) after such acts of part performance of the parol variation; (2) where defendant sets up the parol variation, and plaintiff seeks specific performance with it; and (3) where it has not been put into writing because of fraud. It will be seen that these cases are of an exactly similar nature to those above stated, in which specific performance will be decreed of an original parol contract.

Although by the C. L. P. Act, 1854 (17 & 18 Vict. c. 125), an action of *mandamus* is given at law to compel the performance of certain duties in the fulfilment of which the plaintiff is personally interested, yet it has been decided that a person cannot be compelled under that Act to perform a contract entered into by him. (*Benson* v. *Paul*, 25 L. J. (Q. B.) 274.)

PUSEY v. PUSEY.

(1 *Lead. Cas. Eq.* 820.)

The plaintiff brought this bill for specific delivery up of a certain horn which in ancient time was delivered to his ancestors to hold their land by. The defendant demurred to this bill. *Decided*:—That the demurrer must be overruled, and that the heir was well entitled to the horn.

DUKE OF SOMERSET v. COOKSON.

(1 *Lead. Cas. Eq.* 821.)

The plaintiff, as lord of a certain manor, was entitled as treasure-trove to an old altar-piece made of silver, remarkable for a Greek inscription and dedication to Hercules, and the defendant had obtained possession of the same. This suit was brought to obtain its delivery up in specie undefaced, and the defendant demurred. *Decided*:—That this demurrer must be overruled.

Notes on these two Cases.—In the same way that the Court of Chancery will only decree specific performance of a contract when it is one for the breach whereof damages will not compensate, so the reason of the above decisions was that the chattel was of such a nature that the loss of it could not be fully compensated for by damages. There is, however, one case in which Equity will decree specific delivery of a chattel though of no peculiar value, and that is where there subsists some fiduciary relation between the parties. Specific delivery of a chattel may now, to a certain extent, be obtained at law, for by the C. L. P. Act, 1854

(17 & 18 Vict. c. 125) s. 78, the Court may, upon the application of the plaintiff in an action for the detention of a chattel, order that execution shall issue for the return of the same without giving the defendant the option of retaining it, upon paying the value assessed; but a Court of Law under this enactment can only proceed to enforce the delivery by distringas, whilst a decree in Equity for specific delivery can be enforced by attachment. Also, by 19 & 20 Vict. c. 97, s. 2, the Courts of Law have a further power of this nature given them, and in cases in which generally Equity would not interfere, for it is enacted, that on a verdict for plaintiff in an action for breach of contract to deliver specific goods for a price of money, on the application of the plaintiff, and by leave of the judge, the jury shall find, (1) What are the goods in respect of which action is brought; (2) What (if anything) the plaintiff would have been liable to pay for delivery thereof; (3) What damages (if any) the plaintiff will be entitled to if the goods are delivered in execution as thereinafter mentioned; and (4) What damages if not so delivered. And thereupon, on the plaintiff's application, the judge may order execution to be issued *for delivery of the goods themselves* on payment by the plaintiff of the sum (if anything) found by the jury to be paid by him, *without giving the defendant the option of retaining the same* upon paying the damages assessed.

FLETCHER v. ASHBURNER.

(1 *Lead. Cas. Eq.* 826.)

Decided:—That it is an established principle that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted; and this, in whatever way the direction is given; and, therefore, in this case that

real estate having been ordered to be sold, it became personalty, and went accordingly.

ACKROYD v. SMITHSON.

(1 *Lead. Cas. Eq.* 872.)

Here the testator gave several legacies, and ordered his real and personal estate to be sold, his debts and legacies to be paid out of the proceeds arising from the sale, and the residue thereof he gave to certain legatees. Two of these residuary legatees died in the testator's lifetime; and this bill was filed by the next of kin of the testator claiming these lapsed shares, and the question was whether such shares—being originally composed partly of real and partly of personal estate—belonged to the next of kin as being converted into personalty, or whether the part originally composed of real estate resulted as real estate, and therefore descended to the heir-at-law of the testator.

Decided:—That so far as the shares were originally constituted of personal estate they should go to the next of kin; but so far as they originally consisted of real estate they should go to the heir-at-law.

Notes on these two Cases.—"Equity looks on that as done which ought to be done." It is upon this maxim that the case of *Fletcher* v. *Ashburner* proceeds, and that case, or more generally the whole doctrine of conversion, forms indeed the best illustration of this maxim. Conversion has been well defined as "that change

in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, and transmissible and descendible as such." To effect a conversion it is necessary that the direction to convert be imperative and *not* optional, and a direction to convert at the request of certain parties will be held imperative unless it is inserted for the purpose of giving a discretion to those parties.

The case of *Ackroyd* v. *Smithson* is sometimes confused by students with that of *Fletcher* v. *Ashburner* as simply deciding the doctrine of conversion, and they are chiefly for that reason considered here together. *Ackroyd* v. *Smithson* is of course quite beyond the doctrine of conversion, and forms an instance of a resulting trust, and shews that where the purposes of the conversion fail there the property shall remain and go in its original state; thus if a testator devises to trustees to sell and divide the proceeds between two persons, and they die during the testator's lifetime, the property remains in its original state, and if only one of the parties dies, there as to his moiety there will be no conversion, but it will go according to its original quality, and the principle of this is, that where an estate is converted merely *for a particular purpose* and that fails, the Court will not infer an intention to convert for any other purpose. *Ackroyd* v. *Smithson* is only on the point of a resulting trust in the case of *real* estate directed to be sold, and it was at first doubted whether the rule there established applied to the case of *money* directed to be laid out in the purchase of land to be settled upon trusts which either wholly or partially failed; but it has now long been decided that it does so apply.

LE NEVE v. LE NEVE.

(2 *Lead. Cas. Eq.* 35.)

Here lands in Middlesex were settled by a deed which was *not* registered. Many years afterwards they were settled on a second marriage, and the settlement was

duly registered; but the agent of the person taking the lands under the second settlement had notice of the former. *Decided*:—That the object of the Register Act being only to secure subsequent purchasers and mortgagees against *prior secret conveyances* and fraudulent conveyances, the former settlement should be preferred because of the notice, and that notice to an agent or trustee is notice to the principal.

Notes.—An interest in property is often rendered subservient to a prior interest by reason of notice, where, if there had been no such notice, the latter would have had the preference. Notice may be either actual or constructive, which last is, in fact, only evidence of notice the presumption of which is so violent that the Court will not allow of its being controverted; and whatever is sufficient to put a person upon inquiry is constructive notice of everything to which that inquiry might have led; thus absence of title deeds may constitute constructive notice of some prior interest, but if their absence is satisfactorily accounted for it will not.

It should be mentioned that the mere fact of the registration of a deed affecting lands in a register county is not of itself notice, so that a prior equitable incumbrance will not, although registered, affect a subsequent purchaser without notice who has obtained the legal estate.

HOWE v. EARL OF DARTMOUTH.

(2 *Lead. Cas. Eq.* 320.)

Decided:—That it is a general rule that where personal property is bequeathed for life with remainders over, and not specifically, it is to be converted into the three per

cents., subject in the case of a real security to an inquiry, whether it will be for the benefit of all parties, and the tenant for life is entitled only upon this principle; thus wasting property is converted for the benefit of persons in remainder, future interests for the benefit of the tenant for life.

Notes.—But the testator may by his will shew an intention that the property as it then exists shall be specifically enjoyed, and the Court rather leans in favour of this construction so far as it is consistent with the decision in the above case.

HOOLEY v. HATTON.

(2 *Lead. Cas. Eq.* 346.)

Lady Finch, by her will, gave the plaintiff a legacy of £500, and afterwards, by a codicil, a legacy of £1000, and the question was whether the last legacy alone passed or the legatee should have both. *Decided*:—That the plaintiff was entitled to both legacies; but that if a legacy of the same amount is given twice for the same cause, and in the same act, and in the same, or nearly the same, words, then it will *not* be double; but where in *different* writings there is a bequest of equal, greater, or less sums, it is an augmentation.

Notes.—Although it would appear from this case that if the legacies are given by different instruments, they will never be considered as a repetition, yet this is not quite so, for even then, if they are for the same sum *and* the same motive, the Court presumes that they are but a repetition, but both these coincidences must exist.

It is important to observe whether extrinsic evidence can be given to shew whether a testator intended a legacy to be by way of augmentation or as a repetition, as if so the rules laid down in the above case might often be altered, and it is established on this point that where the Court raises the presumption against double legacies it will receive parol evidence to shew that the testator actually intended the double gift he has expressed, for that but rebuts the presumption of the Court, and supports the apparent intention of the will; but where the Court raises no presumption, as where legacies are given by different instruments, it will not admit parol evidence to shew testator only meant the legatee to take one, for that would be to contradict the will.

EX PARTE PYE.

(2 *Lead. Cas. Eq.* 365.)

Decided:—(1) That as a general rule, where a parent gives a legacy to a child, not stating the purpose with reference to which he gives it, he is understood to give a portion; and in consequence of the leaning against double portions, if the parent afterwards advances a portion on the marriage of the child, the presumption arises that it was intended to be a satisfaction of the legacy either wholly or in part; and this applies where a person puts himself *in loco parentis.*

(2.) But no such presumption arises in the case of a stranger or of a natural child, where the donor has *not* put himself *in loco parentis,* unless the subsequent advance is proved to be for the very purpose of satisfying the legacy; and therefore the legatee will be entitled to both.

TALBOT v. DUKE OF SHREWSBURY.

(2 *Lead. Cas. Eq.* 379.)

Decided:—That if a debtor, without taking notice of the debt, bequeaths a sum as great as, or greater than, the debt, to his creditor, this is a satisfaction; but it is not a satisfaction if it is bequeathed on a contingency, or if it were less than the debt.

CHANCEY'S CASE.

(2 *Lead. Cas. Eq.* 380.)

Testator during his lifetime, and before making his will, gave his servant a bond for £100. He afterwards made his will and bequeathed her £500, *and directed that all his debts and legacies should be paid.*

Decided:—That the legacy was not here a satisfaction of the debt, because it was attended with particular circumstances varying it from the common rule, for the testator had directed that all his debts and legacies should be paid.

Notes on these three Cases.—These three cases are all authorities on and illustrations of the doctrine of satisfaction, the first being as to satisfaction of legacies by portions, and the latter two as to satisfaction of debts by legacies. Satisfaction may be defined as the giving by a person liable to some claim of the donee, of something different from the subject of such claim, but intended in substitution thereof. The cases where satisfaction occurs have been divided into four clauses; viz. (1), the satisfaction of debts by legacies; (2), satisfaction of legacies by subsequent legacies;

(3), the satisfaction of legacies by portions; and (4), the satisfaction of portions by legacies (see Snell's 'Principles of Equity,' 2nd ed., 197). It is important to remember the great difference that exists in satisfaction in the case of portions on the one hand, and in the case of legacies to creditors on the other; for in the first case Equity, leaning against double portions, will be in favour of the satisfaction, but in the latter case it is just the opposite, for Equity will take hold of slight circumstances to rebut the presumption of satisfaction that would otherwise arise, and this is well exemplified by *Chancey's Case*.

WILCOCKS v. WILCOCKS.

(2 *Lead. Cas. Eq.* 415.)

The plaintiff's father, upon his marriage, covenanted to purchase lands of the value of £200 per annum, and settle the same upon himself for life and to his first and other sons in tail. He purchased lands of that value, but made no settlement or disposition thereof, so that they descended to the plaintiff as heir-at-law. *Decided*:—That the plaintiff was not entitled to specific performance of the covenant, but that the lands descended must be taken as a performance or satisfaction thereof.

BLANDY v. WIDMORE.

(2 *Lead. Cas. Eq.* 417.)

In marriage articles the husband covenanted to leave his wife £620 if she should survive him. He died intestate, and the wife's share, under the Statute of Distributions, far exceeded £620. *Decided*:—That the wife

was *not* entitled to have the £620 *and* her distributive share, but the distributive share must be taken as a satisfaction or performance of the covenant.

Notes on these two Cases.—The doctrine of "Performance" which is illustrated by the above cases bears rather closely on that of satisfaction; but on a very short consideration of the subject, and a comparison of the cases on satisfaction (see pp. 49–51) with those above given on performance, the distinction will be obvious. The distinction has been stated to be that "satisfaction implies the substitution or gift of something different from the thing agreed to be given, but equivalent to it in the eye of the law, while in cases of performance the thing agreed to be done is in truth wholly or in part performed." *Wilcocks* v. *Wilcocks* and *Blandy* v. *Widmore* exemplify the maxim, which is shortly stated, as "Equity imputes an intention to fulfil an obligation." In *Wilcocks* v. *Wilcocks* it will be seen that the lands there purchased were of equal value with those covenanted to be settled, but it has been since decided that even where the lands purchased are of less value, they shall be considered as in part performance of the covenant.

It should be mentioned that it has been decided that although a distributive share on an intestacy will be taken as performance of a covenant, yet a gift by will of a sum of money as a residue will not so operate *per se*, because it imports bounty.

EYRE v. COUNTESS OF SHAFTESBURY.

(2 *Lead. Cas. Eq.* 645.)

The former Earl of Shaftesbury, by his will, gave the guardianship of his infant son to the plaintiff and two others, since deceased, without expressing that it was to be to the survivor of them, and the plaintiff now prayed that the infant (who was in his mother's custody) might

be delivered up to him as his guardian. *Decided*:—That though the guardianship was only given to the three persons, without saying, "and to the survivors or survivor of them," yet the survivor—the plaintiff—should have it.

Afterwards, when the infant was of the age of fourteen years, his mother, the Countess, procured his marriage with one Lady Susannah Noel, without the consent or privity of the plaintiff, the guardian. *Decided*:—That the Countess was liable for a contempt of Court, although the marriage was in other respects proper.

Notes.—There are properly six species of guardianship, viz. (1) By nature; (2) By nurture; (3) In socage; (4) By statute; (5) By appointment of the Court of Chancery; (6) *Ad litem.* There is also guardianship by custom, and the quite obsolete species of guardianship by election.

The above is the leading case on the nature of the guardianship and the guardian's powers under the statute of 12 Car. 2, c. 24. That statute gives the *father* * the power by deed executed in writing, or by his last will and testament, to appoint the custody and tuition of such of his children as at the time of his death are neither of full age nor married until they attain the age of twenty-one years, or during any less period. This statute of course only gives the power to the *father*; but a stranger may, to a certain extent, appoint a guardian, for such an appointment will be effectual if there is a legacy to the father conditional on his giving up the guardianship, which legacy the father elects to take, or if it is manifestly for the benefit of the infants, and the duty of the father to acquiesce in the appointment; but the benefit to the infant must be a solid consideration, and not merely expectations.

---

* The above statute gives this power to the father, whether he is of full age or not; but now, as by the Wills Act (1 Vict. c. 26) an infant cannot make a valid will, he cannot appoint a guardian by will.

By statute 2 & 3 Vict. c. 54, it is provided that judges in Equity may make orders on petition for the access of mothers to their infant children, and if such children be within the age of seven years for delivery of them into the mother's custody until attaining such age of seven years; but no order is to be made under this provision in favour of a mother against whom adultery has been established.

STAPILTON v. STAPILTON.

(2 *Lead. Cas. Eq.* 824.)

Decided: — That an agreement entered into upon a supposition of a right, or of a doubtful right, though it after comes out that the right was on the other side, shall be binding, and the right shall not prevail against the agreement of the parties; for the right must always be on one side or the other, and therefore the compromise of a doubtful right is a sufficient foundation of an agreement.

That where agreements are entered into to save the honour of a family, and are reasonable ones, a Court of Equity will, if possible, decree a performance of them.

GORDON v. GORDON.

(3 *Swanst.* 400.)

Here there had been an agreement between two brothers for the settlement of the family estates, as the younger disputed the elder's legitimacy. At the time of the agreement, however, the younger brother was aware of a private marriage that had taken place, and this was

not communicated to the other. The legitimacy of the elder brother was afterwards established, and although some nineteen years had elapsed, *Decided:*—That the agreement must be rescinded because of the concealment by the younger brother of the fact of the private marriage, and that it mattered not whether the omission to disclose it originated in design or in an honest opinion of the invalidity of the ceremony and a want of obligation on his part to make the communication.

Notes on these two Cases.—The rule as to family compromises is laid down in Snell's 'Principles of Equity' (2nd ed., p. 360), thus:—"In order that a transaction not otherwise valid may be supported upon the ground of it being a family arrangement, there must be a full and fair communication of all material circumstances affecting the subject matter of the agreement which are within the knowledge of the several parties, whether such information be asked for by the other party or not."

Stapilton v. *Stapilton* is given in Messrs. White and Tudor's Book as the leading case on this subject; but the facts and decision in *Gordon* v. *Gordon* are also given above, as it is thought that it constitutes a more forcible illustration of the subject.

BRICE v. STOKES.

(2 *Lead. Cas. Eq.* 865.)

The question in this case was, whether a trustee should be charged with certain purchase-money, which, though he had joined in the receipt, had been received by his co-trustee. *Decided:*—That *under the particular circumstance* of the case he was liable to be charged, the sale being

unnecessary, and he permitting his co-trustee to keep and act with the money contrary to the trust; but that he should not be charged in respect of the interest of one of the *cestuis que trust* who had notice of the breach of trust and acquiesced therein; and it was laid down that there is this great distinction between trustees and executors, viz., that though where trustees or executors join in a receipt, *primâ facie* all are presumed or considered to have received the money, yet it is competent for a *trustee* to exonerate himself by shewing that the money acknowledged to have been received by all was, in fact, received by one, and the other joined only *for conformity;* but an *executor* can*not* do this, for it is not necessary for him to join in the receipt (as it is in the case of a trustee), and therefore if he does join, he is to be considered as assuming a power over the fund, and therefore answerable.

Notes.—But if the joining of a co-executor in a receipt was absolutely necessary, the usual rule as to executors will not apply, but the rule as to trustees, because as the joining was *necessary* there is no evidence that the executor so joining thereby assumed a control over the fund, which is the ordinary presumption.

Besides deciding this distinction between the receipts of trustees and executors, *Brice* v. *Stokes* is also, as appears above, an authority to shew that acquiescence in a breach of trust discharges a trustee.

PENN v. LORD BALTIMORE.

(2 *Lead. Cas. Eq.* 923.)

Here the plaintiff and defendant being in England, had entered into articles for settling the boundaries of

two provinces in America—Pennsylvania and Maryland, and the plaintiff sought a specific performance of the articles. The principal objection was that the property was out of the jurisdiction of the Court. *Decided:*—That the plaintiff was entitled to specific performance of the articles, for though the Court had no original jurisdiction on the direct question of the original right of the boundaries, the property being abroad, yet that did not at all matter, as the suit was founded on the articles, and the Court acted *in personam.*

Notes.—The above case forms a good illustration of the well-known maxim or principle, "Equity acts *in personam*;" a maxim which, indeed, shews the great difference in the jurisdiction of Equity to that of Law; thus at Law the only remedy on a breach of contract was an action for damages; but in Equity, as the Court acted *in personam*, the party could always be compelled to do the very act.

PEACHEY v. DUKE OF SOMERSET.

(2 *Lead. Cas. Eq.* 1082.)

Here the plaintiff was tenant of copyhold lands in a manor, of which the defendant was lord. He committed acts of forfeiture by making leases contrary to the custom, without licence, and by felling timber, &c., and he now brought this suit offering to make compensation, and praying relief from the forfeitures.

Decided:—That the plaintiff was *not* entitled to relief; and that the true ground of relief against penalties is

from the original intent of the case, where the penalty is designed only to secure money, and the Court can give by way of recompense all that was expected or desired.

SLOMAN v. WALTER.

(2 *Lead. Cas. Eq.* 1094.)

The plaintiff and defendant were partners in the Chapter Coffee House, and it had been agreed that defendant should have the use of a particular room when he wanted it, and the plaintiff gave a bond to secure this. Upon breach of the agreement, defendant brought an action for the penalty of the bond, and the plaintiff brought this suit for an injunction and for the actual damage sustained by defendant to be assessed.

Decided:—That plaintiff was entitled to an injunction, and that the rule is that where a penalty is inserted merely to secure the enjoyment of a *collateral object*, the enjoyment of the object is considered as the principal intent of the deed, and the penalty only as additional, and to secure the damages really incurred.

Notes on these two Cases.—The rule as to when Equity will relieve in the case of penalties is well stated in the latter of the above two cases, whilst the former case shews an instance beyond the relief of Equity. It should be observed also that *Sloman* v. *Walter* shews that the jurisdiction of Equity as to relief against penalties is not so limited as to extend only to those penalties to secure payment of a sum of money, as might appear from *Peachey* v. *Duke of Somerset*, but that it also extends to penalties to secure *performance of some collateral act.*

LANDSDOWNE v. LANDSDOWNE.

(2 *Jacob & Walker*, 205.)

In this case the plaintiff, who was a son of the eldest brother of a deceased intestate, had a dispute with his uncle, a younger brother, respecting the right to inherit the real estate of the deceased. They referred the matter to a schoolmaster, who, acting on the axiom "land cannot ascend, but always descends," awarded in favour of the uncle (the younger brother).

This bill was filed by the son of the elder brother to be relieved.

Decided:—That the plaintiff was entitled to relief, and decreed accordingly, notwithstanding the maxim *Ignorantia legis non excusat.*

Notes.—A mistake as remediable in Equity is defined by Mr. Snell in his 'Principles of Equity' as "Some unintentional act, or omission, or error, arising from ignorance, surprise, imposition, or misplaced confidence."

It is usually said that "*Ignorantia facti excusat*," but "*Ignorantia legis non excusat*;" but these two simple maxims do not at all adequately answer the question, When will Equity give relief in cases of mistake? This is, indeed, a question rather difficult to answer properly in a short space; but the law on the subject seems to be as follows: Mistakes may be divided, firstly, into (1) Mistakes in matters of fact, and (2) Mistakes in matters of law; and as to the latter no relief will be given, *except* where the mistake is one of title arising from ignorance of a principle of law of such constant occurrence as to be supposed to be understood by the community at large. The case of *Landsdowne* v. *Landsdowne* given above is on this exception, the reason of which is, that a

mistake in such a matter affords a conclusive presumption of ignorance, imposition, or the like.

But the other class, viz., mistakes in matters of fact, may be divided as of two kinds; (1) Where the mistake consists in having done something under an erroneous impression; and, (2) Where it consists in having done something never intended to be done. In the latter kind of cases relief will almost universally be given, but in the former it is far more difficult to obtain relief, and more usually it will not be granted, though in some cases it will, for instance, when the mistake consists in supposing the existence of something which in point of fact does not exist. The mistake must be unilateral only unless founded on mutual surprise.

GENERAL INDEX.

A.

ACCIDENT,
Relief given in the case of defective execution of powers, 6, 8
But not usually in the case of non-execution, 7
ACCUMULATION: *See* EXECUTORY INTEREST; PERPETUITIES.
Period allowed for previously to the Thellusson Act, 10
Period allowed by that statute, 10
Construction of that statute, 10
Exception contained in it, 11
ACQUIESCENCE,
By *cestui que trust* in breach of trust, 56
ADEMPTION OF LEGACY: *See* SATISFACTION, 49
ADMINISTRATION OF ASSETS: *See* ASSETS.
ADVANCEMENT,
Presumption of, as against resulting trust, 27, 28
In whose favour it arises, 28
AGENT,
Notice to, 47
ANTICIPATION, RESTRAINT ON: *See* SEPARATE ESTATE, 33, 34
ASSETS,
The order in which they are applied in payment of debts, 38
When the general personal estate is not the primary fund, 39

B.

BREACH OF TRUST,
Acquiescence in, discharges trustee, 56

C.

CESTUI QUE TRUST: *See* TRUSTEES
By acquiescing in breach of trust, discharges trustee, 56

CHARGE OF DEBTS,
Purchaser of personalty exonerated, though a, 25
But not where trust or charge on real estate, unless general, 25
Statutes hereon, 25, 26

CHARITIES: *See* MORTMAIN.
Defective execution of powers remedied in favour of, 8

CHILDREN,
Bequest to, as a class, 14, 15
Rules for construction of testamentary gifts to, 15

CLASS: *See* CHILDREN.

COMMONS,
Things to be appendant by prescription must agree in nature and quality, 3
Common appendant is of common right, 3
Difference between common appendant and appurtenant, 3, 4
Definition of a right of common, 4
Of five kinds, 4
Common of pasture of four kinds, 4
Time of enjoyment, 4

COMPENSATION: *See* ELECTION, 29

COMPROMISES: *See* FAMILY ARRANGEMENT.
Agreements entered into upon the supposition of a right, good, although it afterwards turn out that right on other side, 54

CONSIDERATION,
Conveyance or trust, though without, cannot be revoked, 22
Exception, 22

CONSTRUCTIVE FRAUD: *See* FRAUD.

CONSTRUCTIVE NOTICE: *See* NOTICE.

CONSTRUCTIVE TRUSTS: *See* TRUSTS.

CONTRACT: *See* SPECIFIC PERFORMANCE.

CONVERSION,
Doctrine of, 44
When the objects of conversion fail, the property results in its original quality, 45
Proceeds upon the maxim "Equity looks on that as done which ought to be done," 45

CONVERSION—*continued.*
Definition of, 45, 46
Direction for, must be imperative, 46
The cases of *Fletcher* v. *Ashburner* and *Ackroyd* v. *Smithson* distinguished and explained, 46
Of terminable and reversionary property, 47, 48

D.

DEBTS,
Purchaser, when bound to see to payment of: *See* PURCHASER, 25
Satisfaction of, by legacies: *See* SATISFACTION, 50

E.

EASEMENTS,
Right of way extinguished by unity of possession, unless a way of necessity, 5
Definition of, 5
May arise by grant, or prescription, or Act of Parliament, 5
ELECTION,
Originates in inconsistent or alternative gifts, 29
Against the instrument, 29
Principle of compensation, and not forfeiture, governs the doctrine, 29
EQUALITY IS EQUITY, 19
May be created by deposit of title deeds, notwithstanding Statute of Frauds, 39
EQUITY ACTS IN PERSONAM, 56, 57
EQUITY TO A SETTLEMENT,
The right of a married woman to, 31
If decree made for, and wife dies, it will be carried out for the children, 31
But children have *no* independent equity of their own, 31
No settlement decreed if previous settlement adequate, 32
Settlement of property on wife after marriage in consideration of, when good, 32
Forms an instance of maxim, "He who seeks equity must do equity," 32
ESTATE TAIL,
Words that would confer such an estate in real property give an absolute interest in personalty, 15, 16
EXECUTED TRUSTS: *See* TRUSTS.
Definition of, 20

EXECUTORS,
No remuneration allowed to, 23
But a fair contract to receive compensation for acting, good, 24
Distinction between receipts of, and trustees', 55, 56
Conversion of terminable and reversionary property by, 47, 48
EXECUTORY INTERESTS: *See* PERPETUITIES; ACCUMULATION.
Must take effect within a life or lives in being, and twenty-one years, 9, 10
When a period is allowed for gestation, 9, 10
EXECUTORY TRUSTS: *See* TRUSTS.
Definition of, 21
EXONERATION,
When the general personal estate will be exonerated from payment of debts, 39
EXPECTANT HEIRS,
Bargains with, set aside on the ground of constructive fraud, 36

F.

FAMILY ARRANGEMENTS,
Will be carried out by the Court if reasonable, 54
To be good there must be a full disclosure on all sides, 55
FORFEITURES: *See* PENALTIES.
FRAUD,
Constructive, by reason of fiduciary capacity, 25
Rule as to such cases, 25
On the husband's marital right, 30
Exception to the rule laid down in *Countess of Strathmore* v. *Bowes*, 30
Constructive, in the case of bargains with expectants, 34, 35
Same relief formerly given to reversioners and remaindermen, 36
Not so now, 36

G.

GUARDIANSHIP,
Nature of guardianship under 12 Car. 2, c. 24.. 52, 53
If given to several, belongs to survivor, 53
Different kinds of, 53
A stranger can practically, to a certain extent, appoint a guardian, 53

H.

HEIR,
Can only be disinherited by necessary implication, 14
Real estate converted for purposes which fail, results to, 45

I.

IGNORANTIA FACTI EXCUSAT: *See* MISTAKE, 59, 60
IGNORANTIA LEGIS NON EXCUSAT, 59, 60
IMPLICATION,
Estates by, how they arise, 14
Devise to heir-at-law after death of another person, gives latter a life estate by implication, 14
Secus where devisee is not the heir, 14
Reason of this, 14
IMPLIED TRUSTS: *See* TRUSTS.
INFANTS,
Guardian may be appointed to, under 12 Car. 2, c. 24..52
Nature of such guardianship, 53
Mother may obtain order for delivery up of infants under seven years of age, and for access to them afterwards, 54

J.

JOINT TENANCY,
Is created by a gift to two or more simply, 19
Equity does not favour, 19
None, where purchase for a joint undertaking, 19
None, where purchase-money advanced in unequal shares, 19, 20
None on mortgage, 20
None, on a purchase by joint mortgagees of equity of redemption, 20

L.

LAPSE,
Arises by death of devisee or legatee during testator's lifetime, 16
How it may be prevented, 16
Exceptions introduced by statute, 16
LEGACIES: *See* SATISFACTION.
When vested, and when contingent, 17, 18
If bequeathed "at," "if," or "when," usually contingent, 18
If two of same amount given by same instrument, usually considered a repetition, 48

LEGACIES—*continued.*
But parol evidence admissible to shew the contrary, 49
But if by different instruments, usually considered an augmentation, 48
And here parol evidence *not* admissible to shew the contrary, 49
LIEN,
Vendor's, for unpaid purchase-money, 28
Vendor may lose his, by taking another security, but proof is on the purchaser, 28
Vendor has lien, although the deed expresses that purchase-money is paid, 28
Vendor's, is now primarily payable out of the land, 28

M.

MARITAL RIGHT,
Fraud on the husband's, arises by secret conveyance by intended wife, 30
Except in case of seduction, 30, 31
Supposed exception in the case of settlement on children by former marriage, 30, 31
MARRIAGE ARTICLES,
Distinction between trusts in, and in wills, 21
If before marriage, and settlement afterwards, articles govern, 21
Secus if both after marriage, unless settlement expressed to be in pursuance thereof, 21
MARRIED WOMAN,
Her equity to a settlement, 31
For what debts her separate estate will be liable, 32, 34
On a mortgage of her estate for husband's purposes an implied trust arises, 33
Effect of separate estate clause and clause against anticipation, 33
MAXIMS OF EQUITY,
Equality is equity, 19
Equity follows the law, 21
He who seeks equity must do equity, 31, 32
Where the equities are equal the law must prevail, 37, 38
Equity looks on that as done which ought to be done, 44, 45
Equity imputes an intention to fulfil an obligation, 51, 52
Equity acts *in personam*, 56, 57

MISTAKE,
Definition of, 59
Ignorantia facti excusat, 59
Ignorantia legis non excusat, 59
Division of, 59
No relief usually in cases of mistakes of law, 59
Exception, 59
Of fact, as a general rule relieved against in equity, 59
Of fact of two kinds, 60
Must be unilateral, 60

MORTGAGE,
Equitable, by deposit of title deeds notwithstanding Statute of Frauds, 39, 40

MORTMAIN,
Legacy towards discharge of mortgage, bad, 11
Statement of the different enactments on, 11, 12, 13

N.

NOTICE,
Purchaser for valuable consideration without, protected, 37, 38
Former settlement preferred though not registered, because of notice, 47
To an agent or trustee is to the principal, 47
Either actual or constructive, 47
What is constructive, 47
Registration alone is not, 47

O.

OPTION: *See* ELECTION, 29

P.

PAROL EVIDENCE: *See* SPECIFIC PERFORMANCE, 41; LEGACIES, 49

PAROL VARIATION: *See* SPECIFIC PERFORMANCE, 42

PENALTIES,
When Equity will not relieve, 57
When it will, 58

PERFORMANCE,
Equity imputes an intention to fulfil an obligation, 51, 52
Covenant to purchase land, and land is purchased, 51

PERFORMANCE—*continued.*
Covenant to leave by will, and share under Statutes of Distribution, 51, 52
Distinction between, and satisfaction, 52
PERPETUITIES,
Rule against, 9
Further restriction as to accumulations, 10
PERSONAL ESTATE,
General personal estate is the primary fund to pay debts, 38
Except in certain cases, 39
PORTIONS,
Not to be raised if the party dies, though in similar cases a legacy might be, 17
POWERS,
Excessive execution of, 6
If execution excessive, part may be good, and excess only bad, 6
Equity will assist in case of defective execution, 6, 7, 8
But not in the case of non-execution except in two cases, 7, 8
Must be executed *bonâ fide*, 7, 8
Liability of purchaser under, of sale, to see to application of purchase-money, 25, 26
PRECATORY TRUSTS,
When created, 8, 9
Recommendation must be imperative, 9
The subject and object of recommendation must be certain, 9
PURCHASER,
His liability to see to application of purchase-money before statutes, 25
Trustees, powers of giving receipt to, under 22 & 23 Vict. c. 35, and 23 & 24 Vict. c. 145 .. 25, 26
Difference between those statutes, 26
No discovery against, without notice, 38

R.

RECEIPTS BY TRUSTEES: *See* TRUSTEES; EXECUTORS, 25
REMAINDERMEN,
Formerly entitled to same relief as expectant heirs, 36
Statute 31 Vict. c. 4 .. 36
RENEWAL OF LEASE,
Trustee renewing in his own name, a constructive trustee of renewed lease, 23

RESULTING TRUSTS: *See* TRUSTS.
RIGHT OF COMMON: *See* COMMONS.
RIGHT OF WAY: *See* EASEMENTS.
RULE IN SHELLEY'S CASE,
Terms of, 13
Applies to equitable estates, 13
But *not* when one limitation legal and other equitable, 13
RULE IN WILD'S CASE,
Terms of, 13
Reason, 14
REVERSIONERS,
Formerly entitled to same relief as expectant heirs, 36
Statute 31 Vict. c. 4..36
REVERSIONARY PROPERTY,
Conversion of, by trustees, 47, 48

S.

SATISFACTION,
Of legacy to child occurs if money afterwards advanced, 49
But not in the case of a stranger, 49
Of debts by legacies, 50
Definition of, 50
Equity leans against double portions, 51
But does not favour presumption of satisfaction of debts by legacies, 51
Distinction between, and performance, 52
SEPARATE ESTATE.
For what debts liable, 32, 34
Effect of separate use clause, and of clause against anticipation, 33, 34
Though it may be liable, no personal decree can be made against a married woman, 34
Statute 33 & 34 Vict. c. 93..34
SIMONY,
Sale of next presentation incumbent being *in extremis, not* bad, 5
But bad if living had been actually vacant, 5
SPECIFIC DELIVERY OF CHATTELS.
When decreed, 43
Will be decreed, though of no peculiar value, if fiduciary relation subsist, 43
Powers now given to Common Law Courts, and how different from the powers in Equity, 43, 44

SPECIFIC PERFORMANCE,
May be decreed, notwithstanding terms not strictly observed, 40
Of parol contract decreed after acts of part performance, 41
Defendant may go into parol evidence in resisting, 41
But plaintiff cannot usually do so, 41
When the decree will be with compensation, 42
Cases in which specific performance of parol contract decreed, 42
Nature of the acts of part performance, 42
When plaintiff may obtain decree with parol variations, 42
The powers given to common law, and how limited, 42
Of contract relating to land abroad may be enforced here, for equity acts *in personam*, 57

STATUTES:
27 Hen. 8, c. 10 (Statute of Uses), 6
12 Car. 2, c. 24 (Guardianship), 53
29 Car. 2, c. 3 (Statute of Frauds), 40
9 Geo. 2, c. 36 (Mortmain Act), 11, 13
39 & 40 Geo. 3, c. 98 (Thellusson Act), 10, 11
2 & 3 Wm. 4, c. 71 (Prescription Act), 4, 5
1 Vict. c. 26 (Wills Act), 16
2 & 3 Vict. c. 54 (Infants), 54
17 & 18 Vict. c. 113 (Locke King's Act), 39
——— c. 125 (Common Law Procedure Act, 1854), 42, 44
19 & 20 Vict. c. 97 (Mercantile Law Amendment Act), 44
22 & 23 Vict. c. 35 (Lord St. Leonards' Act), 25, 26
23 & 24 Vict. c. 145 (Lord Cranworth's Act), 26
24 Vict. c. 9 (Mortmain), 12
27 Vict. c. 13 (Mortmain), 12
30 & 31 Vict. c. 69 (Locke King's Amendment Act), 28, 39
31 Vict. c. 4 (Reversioners, &c.), 36
33 & 34 Vict. c. 34 (Charities), 12
——— c. 93 (Married Women's Property Act), 34
34 Vict. c. 13 (Public Parks, &c., Act), 12
35 & 36 Vict. c. 24 (Incorporation of Charitable Trustees), 12

SURETYSHIP,
Contribution in Equity grounded on general justice and not on implied contract, 26
Surety entitled to enforce contribution, although ignorant that there were co-sureties, 26, 27
At Law contribution is founded on contract, 27
Different effects of insolvency at Law and in Equity, 27
Contribution against representatives of a deceased surety, 27

SURVIVORSHIP,
None in joint undertakings, 19
None in purchases when money advanced in unequal shares, 19
None in mortgages, 20

T.

TACKING,
Doctrine of, 36
Third mortgagee who advanced without notice of second may buy in first mortgege and tack, 36
Judgment creditor cannot tack, for he did not lend his money on security of the land, 37
First mortgagee lending further sum on a judgment may tack against mesne incumbrancer, 37
Exemplifies maxim that where the equities are equal the law shall prevail, 37

TENANCY AT WILL,
May arise by simply letting premises and reserving a compensation accruing *de die in diem*, 1
Rule for determining when tenancy at will and when for years, 1

TENANCY IN COMMON.
Equity leans towards, in preference to joint tenancy, 19

TENANCY FROM YEAR TO YEAR,
On a general letting is implied on payment of a yearly rent, 1
Or on a general letting at a yearly rent, though payable half-yearly or quarterly, 1
The Courts lean to a tenancy from year to year in preference to a tenancy at will, 1

TRUST ESTATE,
Will pass under a general devise unless a contrary intention appears, 17

TRUSTS: *See* TRUSTEES.
Modern doctrine of uses and trusts, 6
Executed and executory, 20, 21
Illustration of maxim that Equity follows the Law, 21
Distinction between trusts executory in marriage articles and in wills, 21
Distinction as to voluntary, 21
Though voluntary cannot be revoked unless it be a trust for creditors, 22
If purchase made and conveyance taken in a stranger's name resulting trust arises, 27
Unless certain relations exist, 27, 28
Parol evidence admissible to contradict resulting trust, 28
Constructive, in case of vendor's lien, 28

TRUSTEES: *See* TRUSTS.
Cannot generally purchase from *cestuis que trust*, 22, 23
But may when *cestui que trust* is *sui juris*, and has discharged them, 23

TRUSTEES—*continued.*
Cannot renew lease for their own benefit, 23
Must not make any advantage out of trust, 23
No remuneration allowed to, 23, 24
But may stipulate to receive fair compensation, 24
Can now give valid receipts for all moneys payable to them under their trusts by reason of 22 & 23 Vict. c. 35, and 23 & 24 Vict. c. 145..26
Differences between these two statutes, 26
Distinction between receipts of trustees and executors, 55
Distinction does not exist if it was necessary for executor to join, 56
Acquiescence in breach of trust discharges, 56

U.

USES: *See* TRUSTS.
Statute of, 6
Use upon a use, 6
How the modern doctrine of uses and trusts arose, 6

V.

VENDOR'S LIEN: *See* LIEN.
VOLUNTARY CONVEYANCES OR TRUSTS,
Cannot be revoked, 22
Exception, 22

W.

WASTE,
Tenant in tail not punishable for, 2
The rights of tenants for life, 2
Definition of, 3
Is either voluntary or permissive, 3
Or legal or equitable, 3
WASTING PROPERTY,
Conversion of, by trustees, 47, 48

LONDON: PRINTED BY W. CLOWES AND SONS, STAMFORD STREET AND CHARING CROSS.

LAW WORKS

PUBLISHED BY

STEVENS AND HAYNES,

Law Publishers,

BELL YARD, TEMPLE BAR,

LONDON, W.C.

Just published, in 8vo., Second Edition, price 21*s.*, cloth,

A TREATISE ON THE LAW OF DAMAGES.

Comprising their Measure, the Mode in which they are Assessed and Reviewed, the Practice of Granting New Trials, and the Law of Set-off. By JOHN D. MAYNE, of the Inner Temple, Esq., Barrister-at-Law. Second Edition, by LUMLEY SMITH, of the Inner Temple, Esq., Barrister-at-Law.

"Few modern text-books have a higher authority than Mayne on Damages. An argument is seldom heard in the courts upon a question of the measure of damages without the work being referred to; and there are several points upon which there was, at the date of the first edition (1856), either an absence or a conflict of authority, and upon which the views advanced by the author have since been held to be law by the courts. . . . . It is fortunate for the reputation of the work that so good an editor has been found for it as Mr. Lumley Smith. The additions to the text of the former edition are distinguished by brackets. Mr. Lumley Smith's work has been well done, and the new cases are skilfully incorporated. . . . . Probably there is no other one subject upon which the cases reported as well as unreported so frequently present the same difficulty of extracting from complicated statements of fact, special in their character and not likely to occur again, the legal principles involved in the decision, so as to be available for guidance in other cases. It is exactly this difficulty which makes the subject one upon which a good text-book such as the present is peculiarly valuable."—*Solicitors' Journal.*

"We are glad that this useful work fell into the hands of so capable an editor as Mr. Lumley Smith. It is always a great advantage gained when an editor has had practical experience of the subject with which he deals, and it is a positive gain to the law when busy lawyers can find time to do well the work which is so apt to fall into the hands of those who have little learning and less practice. The law relating to damages is a branch of our jurisprudence peculiarly practical in its nature and highly important to suitors and the profession; it is, moreover, surrounded by difficulties which require a clear explanation before they become intelligible to the ordinary mind. . . . . .

"The concluding chapter (c. 19) is very important, and we should like to make copious extracts from it. It deals with the 'powers of the court or judge in regard to damages.' We recommend it to the attention of our readers, as indeed we do the entire work, which is excellently executed, with an entire freedom from verbosity, and a good index."—*Law Times.*

"In the year 1856 Mr. John D. Mayne, a gentleman of the bar, now enjoying a very extensive practice in the Indian Empire, published a treatise on the Law of Damages. Mr. Mayne conferred a great boon on the profession by his labours, and for sixteen years his book has been regarded with high respect in Westminster Hall. In the ordinary course of things such a lapse of time, from the natural accretion of precedents, would have created a demand for a new edition, but in the particular department of law investigated by Mr. Mayne there has been an extraordinary development of principles, exhibited in numerous cases, upon which the judges have expended a large amount of time, industry, and learning. Consequently, the publication of a new edition is not premature. On the contrary, it was high time that the profession should be supplied with a treatise condensing and arranging the matter brought into existence by the contested cases of that period. It is perfectly intelligible that Mr. Mayne's absence from England and the toil of his professional career have prevented him from undertaking this duty himself. But the performance of it has fallen on a deputy, whose success in the discharge thereof might fairly have been anticipated, and who in the result has, we think, not disappointed the reasonable expectations formed concerning him.

"Mr. Lumley Smith has evidently been actuated by a modest desire not to despoil the original author of well-earned fame. He has, as far as possible, retained the primary form of the book, and has distinguished what Mr. Mayne wrote from what he himself has written, by enclosing all the later matter in brackets, adding a brief separate chapter on the assessment of damages in the Court of Chancery under Lord Cairns's Act, 21 & 22 Vict. c. 27. He has also cited many Scotch and Irish cases, and the leading American decisions of recent date.

"One word with regard to the book itself will not be out of place. It is well printed, in an excellent form, and of a convenient size—no small considerations in a text-book, which, from the nature of its contents, is useful rather for reference than for study. Good looks in a book set off its intrinsic merits, just as an imposing appearance adds to the dignity and influence of a judge."—*Law Journal.*

Books for Students.

In 8vo., price 18*s.*, cloth,

THE PRINCIPLES OF EQUITY.

Intended for the Use of Students and the Profession. By EDMUND H. T. SNELL, of the Middle Temple, Barrister-at-Law. Second Edition by J. R. GRIFFITH, of Lincoln's Inn, Barrister-at-Law. In one vol., 8vo., 1872.

*** *This Work has become a Standard Class-book in England, Ireland, India, and the Colonies.*

"The lectures of Mr. Birkbeck probably bear the ordeal of reproduction better than any other lectures on law of which we have any knowledge. He is a more scientific lawyer than Mr. Smith, whose manual has been so largely used by law students, and naturally, therefore, 'Snell's Equity' must be more useful than Smith's Manual. With respect to this edition, we have only to observe that Mr. Griffith has edited his author's work with great care, and has noted all the cases, whilst preserving the convenient form in which it originally appeared."—*Law Times.*

"The book has the merit of being written in clear and intelligible language. It is admirably printed, and otherwise carries with it an attractive appearance."—*Law Journal.*

"Mr. Snell's volume, which we noticed favourably some four years ago on its first appearance, is a manual very well adapted for the use of students, being written and arranged with discrimination and intelligence. We have pleasure in stating our opinion that the work will continue to maintain the position it had already gained."—*Solicitors' Journal.*

"It (Snell's book) is less bulky than Story's Commentaries, while it is easier to comprehend; and, from the number of illustrative cases, easier to remember than Adams' Treatise on Equity. And on one point it is superior to both, and, indeed, deserves high commendation. Every one who has read the recent reports of Equity Cases in England, is aware how many important decisions have been made within the last four years on many points of Chancery law. To these decisions, which are wholly wanting in Adams, and very imperfectly given in the recent editions of Story's Commentaries, Mr. Snell has made very full reference; and it is this part of his book which, besides its aid to the student, gives it a real value to the practitioner."—*American Law Review.*

Just published, in 8vo., price 7*s.* 6*d.*, cloth,

AN EPITOME AND ANALYSIS OF SAVIGNY'S TREATISE ON OBLIGATIONS IN ROMAN LAW.

By ARCHIBALD BROWN, M.A. Edin. and Oxon. and B.C.L. Oxon., of the Middle Temple, Barrister-at-Law.

In the Press.

A MANUAL OF CONSTITUTIONAL HISTORY,

Designed as a Text-Book for Students. By T. P. TASWELL-LANGMEAD, B.C.L., of Lincoln's Inn, Barrister-at-Law, late Vinerian Scholar in the University of Oxford, and Tancred Student in Common Law.

In 8vo. 1866. 12*s.*, cloth,

BRACTON AND HIS RELATION TO THE ROMAN LAW.

A contribution to the History of the Roman Law in the Middle Ages. By CARL GÜTERBOCK, Professor of Law in the University of Königsberg. Translated by BRINTON COXE.

Just published, Second Edition, in 8vo., price 5*s.*, cloth,

THE MARRIED WOMEN'S PROPERTY ACT, 1870.

Its Relations to the Doctrine of Separate Use, with Notes by J. R. GRIFFITH, B.A. Oxon., of Lincoln's Inn, Barrister-at-Law.

Just published, in 8vo., price 3*s.* 6*d.*, cloth,

AN EPITOME OF LEADING COMMON LAW CASES;

With some Short Notes thereon. Chiefly intended as a Guide to "SMITH'S LEADING CASES." By JOHN INDERMAUR, Solicitor (Clifford's Inn Prizeman, Michaelmas Term, 1872).

By the same Author.

AN EPITOME OF LEADING CASES IN EQUITY AND CONVEYANCING.

Now ready, in 8vo., price 9*s.*, cloth,

THE RULE OF THE LAW OF FIXTURES.

Second Edition, embracing references to English, Scotch, Irish, and American Decisions. By ARCHIBALD BROWN, M.A. Edin. and Oxon. and B.C.L. Oxon., of the Middle Temple, Barrister-at-Law.

"Great industry has been spent in reconciling the numerous decisions on a very difficult branch of law, and even in illustrating it by references to American cases. . . . In one respect Mr. Brown seems admirably adapted to the task of writing on the law of fixtures. He is strongly convinced of the influence of history upon law. In his opening sentence he tells us that 'it has been said of history that it finds its entablature in law; it may conversely be said of law that it finds its explanation in history.' The sentence is a good opening upon a subject which owes so much of its law to arbitrary rules rather than general principles as fixtures. Mr. Brown proceeds to trace the effect of history on his subject in a passage which is very *à propos*:— . . . . . Mr. Brown's seventh and last chapter will be found to contain a most serviceable enumeration of the recent cases, arranged according as the conflict was between landlord and tenant, mortgagor and mortgagee, and so on."—*Law Journal.*

In one volume, 8vo., price 18*s.*, cloth lettered,

THE LAW OF COPYRIGHT,

In Works of Literature and Art; including that of the Drama, Music, Engraving, Sculpture, Painting, Photography, and Ornamental and Useful Designs; together with International and Foreign Copyright, with the Statutes relating thereto, and References to the English and American Decisions. By WALTER ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law.

"A book that is certainly the most complete treatise upon the complex subject of copyright which has ever been published in England."—*Athenæum.*

"A work much needed, and which he has done exceedingly well."—*American Law Review.*

"We make no question that Mr. Copinger's well-devised, well-written, and useful treatise will become a standard work."—*Law Journal.*

"The book is a thoroughly good one: there is scarcely a decision of any importance left unnoticed, and the law in its bearings is fairly and judiciously treated."—*The Bookseller.*

"In conclusion we refer our readers to this capital book on Copyright. The reader will find in it citations on the latest cases bearing on the subject, chapters on International Copyright, and the best and newest opinions on the subject so very important to authors and to publishers."—*The Publishers' Circular.*

Second Edition, in one thick volume, crown 8vo., price 20*s.*, cloth,

THE PROBATE, LEGACY, AND SUCCESSION DUTY ACTS.

Comprising 36 Geo. III. cap. 52; 45 Geo. III. cap. 28; 55 Geo. III. cap. 184; and 16 & 17 Vict. cap. 51; with an Introduction, copious Notes and References to all the decided Cases in England, Scotland and Ireland, to Michaelmas Term 1870; together with an Appendix of Statutes, Forms, Tables of Duties, and a full Index. By ALFRED HANSON, Esq., Comptroller of Legacy and Succession Duties.

"It is the only complete book upon a subject of great importance, but which does not come within the regular course of professional study, and therefore requires to be read up when a case having reference to it comes into the solicitor's office.

"Mr. Hanson is peculiarly qualified to be the adviser at such a time. Hence, a volume without a rival."—*Law Times.*

"Since Mr. Hanson produced his first edition he has been appointed Comptroller of Legacy and Succession Duties. His book is in itself a most useful one; its author knows every in and out of the subject, and has presented the whole in a form easily and readily handled, and with good arrangement and clear exposition."—*Solicitors' Journal.*

Just Published, in 8vo., price 10*s.* 6*d.*, cloth,

THE BOVILL PATENT.

A Collection of the Summings-up and Judgments in the Litigation under the Patent of 5th June, 1849, granted to the late G. H. BOVILL for Improvements in the Manufacture of Flour. With an Introduction and some Observations by W. W. WYNNE, Attorney-at-Law.

Table of Contents: Introduction—Judgment of the Court of Exchequer in Bovill *v.* Pimm (30 Jan. 1856)—The Specification under the Patent of 1849—Note upon that Specification—The Experiments at Deptford—Bovill *v.* Keyworth (at Nisi Prius, July, 1856)—Bovill *v.* Keyworth (Motion for New Trial, 28 May, 1857)—Bovill *v.* Goodier (Master of the Rolls, April, 1866)—Bovill *v.* Goodier (Trial before Willes, J., Dec. 1866)—Bovill *v.* Crate (Vice-Chancellor Wood, June, 1867)—Bovill *v.* Cowan (Master of the Rolls, July, 1867)—Bovill *v.* Smith (Vice-Chancellor Wood, Nov. 1867)—Bovill *v.* Goodier (Trial before Byles, J., Feb. 1868)—Bovill *v.* Cowan (Lord Cairns, C., July, 1868)—Bovill *v.* Smith (Lord Cairns, C., Dec. 1868)—Bovill *v.* Goodier (Appeal for New Trial, before Lord Hatherley, C., Dec. 1868)—Bovill *v.* Finch (C. P.)

THE LAW OF INJUNCTIONS.

In two volumes, royal 8vo., price 70*s.*, cloth,

THE LAW AND PRACTICE OF INJUNCTIONS.

Embracing all the subjects in which Courts of Equity and Common Law have jurisdiction. By WILLIAM JOYCE, of Lincoln's Inn, Esq., Barrister-at-Law.

"A work which aims at being so absolutely complete, as that of Mr. Joyce upon a subject which is of almost perpetual recurrence in the Courts, cannot fail to be a welcome offering to the profession; and, doubtless, it will be well received and largely used, for it is as absolutely complete as it aims at being. . . . . This work is, therefore, eminently a work for the practitioner, being full of practical utility in every page, and every sentence, of it. . . . . We have to congratulate the profession on this new acquisition to a digest of the law, and the author on his production of a work of permanent utility and—fame."—*Law Magazine and Review.*

"Mr. Joyce has produced not a treatise but a complete and compendious *exposition* of the law and practice of Injunctions both in equity and common law.

"Part III. is devoted to the practice of the Courts. *Contains an amount of valuable and technical matter nowhere else collected.*

"From these remarks it will be sufficiently perceived what elaborate and painstaking industry, as well as legal knowledge and ability, has been necessary in the compilation of Mr. Joyce's work. No labour has been spared to save the practitioner labour, and no research has been omitted which could tend towards the elucidation and exemplification of the general principles of the Law and Practice of Injunctions."—*Law Journal.*

"He does not attempt to go an inch beyond that for which he has express written authority; he allows the cases to speak, and does not speak for them.

"The work is something more than a treatise on the Law of Injunctions. It gives us the general law on almost every subject to which the process of injunction is applicable. Not only English, but American decisions are cited, the aggregate number being 3,500, and the statutes cited 160, whilst the index is, we think, the most elaborate we have ever seen—occupying nearly 200 pages. The work is probably entirely exhaustive."—*Law Times.*

"Mr. Joyce's work, within the limits which he has assigned himself, is well done. He has been evidently diligent in the collection of cases, and the points decided are stated with accuracy, and with more fullness of detail than in any work on injunctions with which we are familiar. It cannot fail to be useful in instructing practitioners in the proper employment of this much abused method of procedure."—*American Law Review.*

"Mr. Joyce has produced a clear, scientific, and thorough treatise upon the subject of injunctions which, unlike most English works, will be nearly as useful to the American as to the English practitioner.

"We doubt if there can be a single case of any note found upon injunctions in the English law that is not cited in these volumes."—*Chicago Legal News.*

"This work, considered either as to its matter or manner of execution, is no ordinary work. It is a complete and exhaustive treatise both as to the law and the practice of granting injunctions. It must supersede all other works on the subject. The terse statement of the practice will be found of incalculable value. We know of no book as suitable to supply a knowledge of the law of injunctions to our common law friends as Mr. Joyce's exhaustive work. It is alike indispensable to members of the Common Law and Equity Bars. Mr. Joyce's great work would be a casket without a key unless accompanied by a good index. His index is very full and well arranged. We feel that this work is destined to take its place as a standard text-book, and *the* text-book on the particular subject of which it treats. The author deserves great credit for the very great labour bestowed upon it. The publishers, as usual, have acquitted themselves in a manner deserving of the high reputation they bear."—*Canada Law Journal.*

In 8vo., price 7*s.* 6*d.*, cloth,

THE HISTORY OF THE LAW OF TENURES OF LAND IN ENGLAND AND IRELAND.

By W. F. FINLASON, Esq., of the Middle Temple, Barrister-at-Law.

"Mr. W. F. Finlason has done good service in publishing a concise, well-written history of the law of tenures of land in England and Ireland, with particular reference to inheritable tenancy, leasehold tenure, tenancy at will, and tenant right. Confining himself to the facts of legal history, he has collected and presented, in an admirably compact form, all the really useful information it contains."—*Observer.*

In preparation, and will be published shortly after the passing of the Act,

THE MERCHANT SHIPPING CODE;

With Copious Annotations and Observations Explanatory of the Provisions and Working of the Code, together with a full and comprehensive Index. By THOMAS GRAY, Esq., Assistant Secretary, Marine Department, Board of Trade; and COURTENAY P. ILBERT, Esq., of Lincoln's Inn, Barrister-at-Law.

In one volume, royal 8vo., price 30*s.*, cloth lettered,

CASES AND OPINIONS ON CONSTITUTIONAL LAW,

AND VARIOUS POINTS OF ENGLISH JURISPRUDENCE.

Collected and Digested from Official Documents and other Sources; with Notes. By WILLIAM FORSYTH, M.A., Q.C., Standing Counsel to the Secretary of State in Council of India, Author of "Hortensius," "History of Trial by Jury," "Life of Cicero," etc., late Fellow of Trinity College, Cambridge.

"We cannot but regard with interest a book which, within moderate compass, presents us with the opinions or *responsa* of such lawyers and statesmen as Somers, Holt, Hardwicke, Mansfield, and, to come down to our own day, Lyndhurst, Abinger, Denman, Cranworth, Campbell, St. Leonards, Westbury, Chelmsford, Cockburn, Cairns, and the present Lord Chancellor Hatherley. At the end of each chapter of the 'Cases and Opinions,' Mr. Forsyth has added notes of his own, containing a most excellent summary of all the law bearing on that branch of his subject to which the 'Opinions' refer. . . . Our space precludes us from dwelling upon the contents of this work at any greater length, but we think we have said enough to show that it is worthy of a place on the book-shelves of our statesmen, and all who take an interest in constitutional, or rather, national and colonial questions."—*The Contemporary Review.*

"Mr. Forsyth has largely and beneficially added to our legal stores. His work may be regarded as in some sense a continuation of 'Chalmers's Opinions of Eminent Lawyers.' . . . The constitutional relations between England and her colonies are becoming every day of more importance. The work of Mr. Forsyth will do more to make these relations perfectly clear than any which has yet appeared. Henceforth it will be the standard work of reference in a variety of questions which are constantly presenting themselves for solution both here and in our colonies. . . . Questions of colonial law by no means occupy an exclusive share of the volume. . . . Among other questions on which 'opinions' are given, and of which careful summaries and generalisations have been added by Mr. Forsyth, are those relating to vice-admiralty jurisdiction and piracy; the prerogatives of the Crown in relation to treasure trove, land in the colonies, mines, cession of territory, &c.; the power of courts-martial, extra-territorial jurisdiction allegiance, the *lex loci* and the *lex fori*, extradition, and appeals from the colonies. The volume bears marks of extreme care and regard to accuracy, and is in every respect a valuable contribution to constitutional law."—*Law Magazine and Law Review.*

"Mr. Forsyth at the present juncture has done good service not only to his profession, but to all men who take any interest in public affairs, and we therefore hope that those for whom the book is especially intended will not be backward in giving to it that support which the industry and ability of its author, and the public spirit and enterprise of its publishers, so well deserve."—*Canada Law Journal.*

"This one volume of 560 pages or thereabouts is a perfect storehouse of law not readily to be found elsewhere, and the more useful because it is not abstract law, but the application of principles to particular cases. Mr. Forsyth's plan is that of classification. He collects in separate chapters a variety of opinions bearing upon separate branches of the law. Thus, the first chapter is devoted to cases on the common law, and the law applicable to the colonies; the second to the ecclesiastical law relating to the colonies; the third to the powers and duties, civil and criminal liabilities, of governors of colonies; the next to vice-admiralty jurisdiction and piracy; the fifth to certain prerogatives of the Crown: such as lands in the colonies, grants, escheats, mines, treasure trove, royal fish, felon's goods, writ *ne exeat regno*, proclamation, cession of territory, and creation of courts of justice; the sixth chapter contains opinions on martial law and courts-martial; the seventh on extra-territorial jurisdiction; the eighth on the *lex loci* and *lex fori*; the ninth on allegiance and aliens; and then successively on extradition; on appeals from the colonies; on the revocation of charters; on the Channel Islands; on the nationality of a ship, and other matters relating to ships; on the power of the Crown to grant exclusive rights of trade; on writs of habeas corpus; on certain points relating to the criminal law; and lastly, on miscellaneous subjects, such as the declaration of war before hostilities; on the right of war, booty and prize, and on the grant of a marriage licence. . . . This is a book to be read, and therefore we recommend it not to all lawyers only, but to every law student. The editor's own notes are not the least valuable portion of the volume."—*Law Times.*

CLARKE ON EXTRADITION.

Second Edition, in 12mo. (*In the Press*),

A TREATISE UPON THE LAW OF EXTRADITION.

With the Conventions upon the subject existing between England and Foreign Nations, and the Cases decided thereon. By EDWARD CLARKE, Esq., of Lincoln's Inn, Barrister-at-Law and Tancred Student.

"Mr. Clarke has treated the whole question in an able and masterly manner. His style is clear and terse, without the slightest tincture of that technicality and pedantry which so often repel and disgust even the learned reader. . . . . We congratulate Mr. Clarke upon having produced an excellent and useful book on an important and difficult subject, and we heartily commend it to the perusal of our readers."—*Solicitors' Journal.*

LAWS OF MARRIAGE AND DIVORCE.

Recently published, in 8vo., price 12*s.*, cloth,

AN EXPOSITION OF THE LAWS OF MARRIAGE AND DIVORCE,

As administered in the Court for Divorce and Matrimonial Causes, with the Method of Procedure in each kind of Suit; Illustrated by Copious Notes of Cases. By ERNST BROWNING, of the Inner Temple, Barrister-at-Law.

In one thick volume, 8vo., price 32*s.*, cloth,

THE LAW OF RAILWAY COMPANIES.

Comprising the Companies Clauses, the Lands Clauses, the Railways Clauses Consolidation Acts, the Railway Companies Act, 1867, and the Regulation of Railways Act, 1868; with Notes of Cases on all the Sections, brought down to the end of the year 1868; together with an Appendix giving all the other material Acts relating to Railways, and the Standing Orders of the Houses of Lords and Commons; and a copious Index. By HENRY GODEFROI, of Lincoln's Inn, and JOHN SHORTT, of the Middle Temple, Barristers-at-Law.

"The title of this book is the best possible explanation of its contents. Here we have all the statutes affecting Railway Companies, with the standing orders of Parliament, in a volume exquisitely printed, and of most convenient size and form. We have also, what in effect to the practitioner is a complete manual of reference of all the decided cases on Railway Law, together with an index of so copious and accurate a nature, as to render the discovery of every section and every authority easy in the highest degree. . . . We find pages of authorities on 'transfer of shares,' 'calls,' 'forfeiture of shares,' '*sci. fa.*,' 'Lloyd's bonds,' 'contracts by companies,' and 'dividends.' Then comes a mass of matter relating to the voluntary and compulsory acquisition of lands by Railway Companies, while the 'compensation' cases stretch over some fifty pages. So also under the third statute, there are a dozen pages on the powers and duties of Railway Companies in the construction of their works, while the liability of the Companies as carriers of passengers and goods is also elucidated in the most elaborate style. The 'Rating of Railways' adds several pages of authorities. . . . We believe that we have said enough to show that this book will prove to be of pre-eminent value to practitioners, both before Parliamentary committees and in the Courts of Law and Equity."—*Law Journal.*

Second Edition (1870) in 8vo., price 16*s.*, cloth,

THE LAW OF COMPENSATION

FOR LANDS, HOUSES, &c.

Under the Lands Clauses, Railways Clauses Consolidation and Metropolitan Acts, &c., with a full Collection of Forms and Precedents. Second Edition (much enlarged). By EYRE LLOYD, of the Inner Temple, Barrister-at-Law.

"Few branches of the law lying within so small a compass affect so many and such important interests as that which gives compensation for lands compulsorily taken for the purpose of public improvement, or private enterprise for a public benefit, and for injuries done to other private properties by the construction of the necessary works. The cases decided upon the questions that arise for solution in the application of this law are very numerous, and many of them very difficult; and a collection of them well arranged, with the principles they determine clearly stated appended to the statute, could not fail to be cordially welcomed by all concerned in properties they affected, whether lawyers or land valuers. It is not therefore surprising that Mr. Lloyd's admirable treatise, exhaustive as it is, should have passed so rapidly into a second edition. But short as is the time since it made its first appearance, it has sufficed to produce quite a crop of new decisions, all of which have been carefully noted up. The volume contains also a valuable collection of practical precedents."—*Law Times.*

TELEGRAPH CASES

Decided in the Courts of America, Great Britain, and Ireland. Edited by CHARLES ALLEN. In one volume, royal 8vo., 1873. Law calf, 35*s.*

The only formal Treatise on the Law of Telegraphs is that of Scott and Jarnagin, published in 1868. Since that time the Cases occupying over one-third of the present volume have been decided in the Courts of last resort. In the present volume all the adjudicated Cases are to be found, reported so fully that there is no occasion for reference elsewhere. In several instances the Cases are made up wholly or in part from original papers. Any one having occasion to investigate or prepare a Brief upon a question relating to Telegraphs, may find here all the judicial decisions and discussions that are to be found upon the subject; all presented in the compass of a single volume.

In one volume, 8vo.,

MAGISTERIAL AND POLICE LAW.

Being the Statute Law relating to the Jurisdiction and Duties of Magistrates and the Police Authorities, illustrated with Notes and References to Decided Cases. By T. C. MARTIN and H. C. GREENWOOD. (*In the Press.*)

In a handy volume, crown 8vo., price 10*s.* 6*d.*, cloth,

THE LAW OF SALVAGE,

As administered in the High Court of Admiralty and the County Courts; with the Principal Authorities, English and American, brought down to the present time; and an Appendix, containing Statutes, Forms, Table of Fees, etc. By EDWYN JONES, Esq., of Gray's Inn, Barrister-at-Law.

"This book will be of infinite service to lawyers practising in the maritime law courts and to those engaged in shipping. In short, Mr. Jones's book is a complete guide, and is full of information upon all phases of the subject, tersely and clearly written. It will be quite as useful to, as it is as much needed by, the American lawyer as the English, because the salvage laws of America and England are much alike, and Mr. Jones makes constant reference to American authorities. The book is all the more welcome because the subject upon which it treats is but little understood except by a favoured few. Now, however, if interested people remain ignorant it is their own fault. Mr. Jones has treated a very complicated and difficult subject in a simple and concise manner, and his success is commensurate with his simplicity of style."—*Liverpool Journal of Commerce.*

"An admirable treatise on an important branch of jurisprudence is compiled by Mr. Edwyn Jones, of Gray's Inn, Barrister-at-Law, who, in a compact volume, gives us a very comprehensive statement of 'The Law of Salvage,' as administered in the High Court of Admiralty and the County Courts; with the principal authorities, English and American, brought down to the present time, and an Appendix containing statutes, forms, tables of fees, &c. Mr. Jones has consulted a wide range of cases, and systematised with much skill and clearness the leading principles deducible from numerous judgments and precedents, both here and in the United States. His work is likely to become a text-book on the law in question."—*Daily News.*

In 8vo., price 16*s.*, cloth,

THE CHARITABLE TRUSTS ACTS, 1853, 1855, 1860; THE CHARITY COMMISSIONERS JURISDICTION ACT, 1862; THE ROMAN CATHOLIC CHARITIES ACTS:

Together with a Collection of Statutes relating to or affecting Charities, including the Mortmain Acts, Notes of Cases from 1853 to the present time, Forms of Declarations of Trust, Conditions of Sale, and Conveyance of Charity Land, and a very copious Index. Second Edition.

By HUGH COOKE and R. G. HARWOOD, of the Charity Commission.

"Charities are so numerous, so many persons are directly or indirectly interested in them, they are so much abused, and there is such a growing desire to rectify those abuses and to call in the aid of the commissioners for a more beneficial application of their funds, that we are not surprised to receive a second edition of a collection of all the statutes that regulate them, admirably annotated by two such competent editors as Messrs. Cooke and Harwood, whose official experience peculiarly qualifies them for the task.

"It does not profess to be more than a convenient collection of the statutes upon the subject—there is no attempt to produce a treatise.

"The editors place in the hands of the profession that which, after all, the profession most needs—the *ipsissima verba* of the law itself, with the judicial interpretations that have been put upon it, and, where the courts have not decided, the construction of it by minds who are compelled to make it a daily study, and a very copious index. This is the useful work now before us, and it has worthily won the favour with which it has been received."—*Law Times.*

Second Edition, in 8vo. (928 pages), price 40*s.*, cloth,

THE COMMON LAW PROCEDURE ACT,

And other Acts relating to the Practice of the Superior Courts of Common Law, and the Rules of Court in Canada. By ROBERT A. HARRISON, Q.C., D.C.L.

REVIEWS OF FIRST EDITION.

"These are the Acts which have revolutionised the law of Upper Canada, after their progenitors had exercised a like radical influence in the old country. They are, in effect, an amalgamation of our Procedure Acts of 1852 and 1854, together with an Act applying them in a great measure to the county courts of Canada. The work is therefore almost as useful to the English as the Canadian lawyer, and is not only the most recent but by far the most complete edition which we have seen of these important Acts of Parliament."—*Jurist.*

"It is but justice to say that no pains have been spared to make the notes useful and practicable as possible, and that the annotator appears thoroughly to understand his text, and to be remarkably well up in the laws of the mother country."—*Solicitors' Journal.*

A TREATISE ON THE VALIDITY OF VERBAL AGREEMENTS,

As affected by the Legislative Enactments in England and the United States, commonly called the Statute of Frauds; including also the effect of Partial and Complete Performance and the sufficiency of the Writing in Cases where Verbal Agreements are not valid; together with other kindred matters; to which are prefixed transcripts of the various Statutes on the subject now in force in both Countries.

By MONTGOMERY H. THROOP. Vol. I., royal 8vo. 1870. Price 35*s.*, cloth.

Vol. II. is in the Press.

MERCANTILE LAW.

In one volume, demy 8vo., price 10*s.* 6*d.*, cloth,

PRINCIPLES OF THE LAW OF STOPPAGE IN TRANSITU, RETENTION, AND DELIVERY.

By JOHN HOUSTON, of the Middle Temple, Esq., Barrister-at-Law.

"We feel that we are giving Mr. Houston no small praise as a writer on law, when we say that he has come fully up to our idea of a clear narrator and methodical commentator; and that it is impossible to read his book and not discover that clear sequence from topic to topic, and paragraph to paragraph, which is invariably the result of a well-digested analysis of his subject.

"We have no hesitation in saying, that we think Mr. Houston's book will be a very useful accession to the library of either the merchant or the lawyer."—*Solicitors' Journal.*

"It is intended for the edification and use of both lawyers and merchants, and it is so carefully executed, and the points of law are so clearly and amply expressed, and yet so simply withal, that it seems fully able to supply to the lawyer that accurate information of the fact and critical treatment of the principle which he looks for in a really useful text-book, and at the same time to enable a merchant to gain sufficient acquaintance with the law upon the subject, to render himself fully competent to deal with the ordinary emergencies of trade.

"We have, indeed, met with few works which so successfully surmount the difficulties in the way of this arduous undertaking as the one before us; for the language is well chosen, it is exhaustive of the law, and is systematised with great method."—*American Law Review.*

In 8vo., price 21*s.*, cloth,

A TREATISE ON THE COMPANIES ACT, 1862;

With Special Reference to Winding-up, for the purposes of Reconstruction or Amalgamation; with Orders, Forms, and Precedents. Together with a Supplement, containing the Companies Act, 1867, with Notes, and a Digest of Additional Cases. By G. LATHOM BROWNE, of the Middle Temple, Barrister-at-Law.

The Supplement may be had separately, price 2*s.* 6*d.*, cloth.

"Perspicuous statement and felicity of arrangement characterise the work throughout. . . . From his experience as a liquidator and a director, our author has been able to offer a work of a very practical nature, and at the same time of value to the profession."—*Law Magazine.*

"This work is exceedingly well done; and is just such a one as solicitors, directors, officers, shareholders, and creditors of joint-stock companies ought to possess for the guidance and government of their conduct in regard to their interests, duties, or obligations in the company with which they may be connected."—*Money Market Review.*

In 8vo. 1871. Price 21*s.* cloth,

A TREATISE ON THE STATUTES OF ELIZABETH AGAINST FRAUDULENT CONVEYANCES,

The Bills of Sale Registration Acts, and the Law of Voluntary Dispositions of Property generally.

By H. W. MAY, B.A. (Ch. Ch. Oxford), and of Lincoln's Inn, Barrister-at-Law.

"This treatise has not been published before it was wanted. The statutes of Elizabeth against fraudulent conveyances have now been in force for more than three hundred years. The decisions under them are legion in number, and not at all times consistent with each other. The incongruity of the decisions arises in great part from the cause that many of them depend rather upon the finding as to the facts than as to the law, and very many of them are decisions of Courts of Equity, which, unaided by juries, find facts and decide the law applicable to the facts. An attempt to reduce the mass of decisions into something like shape, and the exposition of legal principles involved in the decisions, under any circumstances, must have been a work of great labour, and we are pleased to observe that in the book before us there has been a combination of unusual labour with considerable professional skill. . . . We cannot conclude our notice of this work without saying that it reflects great credit on the publishers as well as the author. The facilities afforded by Messrs. Stevens and Haynes for the publication of treatises by rising men in our profession are deserving of all praise. We feel assured that they do not lightly lend their aid to works presented for publication, and that in consequence publication by such a firm is to some extent a guarantee of the value of the work published."—*Canada Law Journal.*

"Examining Mr. May's book, we find it constructed with an intelligence and precision which render it entirely worthy of being accepted as a guide in this confessedly difficult subject. The subject is an involved one, but with clean and clear handling it is here presented as clearly as it could be. . . . On the whole, he has produced a very useful book of an exceptionally scientific character."—*Solicitors' Journal.*

"The subject and the work are both very good. The former is well chosen, new, and interesting; the latter has the quality which always distinguishes original research from borrowed labours."—*American Law Review.*

"We are happy to welcome his (Mr. May's) work as an addition to the, we regret to say, brief catalogue of law books conscientiously executed. We can corroborate his own description of his labours, 'that no pains have been spared to make the book as concise and practical as possible, without doing so at the expense of perspicuity, or by the omission of any important points.'"—*Law Times.*

"The writer has evidently given to the cases (including the latest) an independent examination and analysis."—*Law Magazine and Law Review.*

"Mr. May's subject is a good one, and no industry has been spared in carrying out his design. His cases and references to Roman and American Law are numerous, and his conclusions just."—*Law Journal.*

Nearly ready, in one thick vol., 8vo.,

THE LAW AND PRACTICE IN BANKRUPTCY:

COMPRISING—

THE BANKRUPTCY ACT, 1869;
THE DEBTORS ACT, 1869;
THE INSOLVENT DEBTORS and BANKRUPTCY REPEAL ACT, 1869, AND THE SUBSEQUENT ACTS;

Together with the General Rules and Orders in Bankruptcy and at Common Law. With the Practice on Procedure, Copious Notes, References, and a very Elaborate and Exhaustive Index. Second Edition, greatly enlarged, with numerous additional Cases, Statutes, Forms, &c. &c. By HENRY PHILIP ROCHE, Esq., of Lincoln's Inn, and WILLIAM HAZLITT, Esq., of the Middle Temple, Barristers-at-Law, and Registrars of the Court of Bankruptcy.

In medium 8vo., price 10*s.*, cloth,

SALAMAN ON LIQUIDATION AND COMPOSITION WITH CREDITORS.

A Practical Treatise on Liquidation by Arrangement and Composition with Creditors, under the Bankruptcy Act, 1869, comprising the Practice of the Office for the Registration of Arrangement Proceedings, as to Receivers, Injunctions, Meetings, Forms, Bills of Costs, Sections of the Acts, the Rules of 1870, and the New Rules of 1871, with Index. By JOSEPH SEYMOUR SALAMAN, Solicitor.

FIRE INSURANCE CASES.

Being a Collection of all the Reported Cases on Fire Insurance in England, Ireland, Scotland, and America, from the earliest period to the present time, Chronologically arranged. With Notes and References. By EDMUND H. BENNETT. Vol. I., covering the period from 1729 to 1839; Vol. II., covering the period from 1840 to 1849. Two vols., royal 8vo. 1872-3. Price 3*l.* 15*s.*, law calf.

It is proposed to issue a collection of *all the cases* on Fire Insurance from the earliest period to the present time, chronologically arranged, with notes and references, by Hon. EDMUND H. BENNETT, of the Boston Bar. The Series will embrace all the reported cases in England, Ireland, Scotland, and America, including Canada and the British Provinces. The opinions of the Court will always be given in full, but the arguments of Counsel and the reporter's statement will be sometimes condensed. New head-notes will also be frequently introduced, and foot-notes and references to other Cases added. The Court by which the Case was determined, and the volume and page where originally reported, will distinctly appear. A Table of Cases, both of those reported and of those only cited, with a full Index, will be found in each volume.

The volumes to complete the Work, and bringing the Cases to the present time, will be published at an early period.

PHILLIPS ON INSURANCE.

A Treatise on the Law of Insurance. By WILLARD PHILLIPS. Fifth Edition. In two volumes, 8vo. 1867. Price 3*l.* 3*s.*, cloth.

In this Edition will be found additions and modifications, supplied by recent jurisprudence as well as by revision, in respect to implied warranty in time Policies; express warranties in Fire Insurance; assignment of Policies; alienation of the subject; Premium Notes; peculiarities of Mutual Insurance Companies; subrogation or salvage in Fire Insurance; and especially under Life Policies.

LIFE AND ACCIDENT INSURANCE REPORTS.

Vol. I.—Containing Reports of all the published Life and Accident Insurance Cases determined in the American Courts prior to January, 1871. With Notes to English Cases. Vol. II.—Containing all the Cases adjudicated on the American and English Courts since the publication of Vol. I.; together with the prior leading English Life and Accident Insurance Cases. By MELVILLE M. BIGELOW, of the Boston Bar. Two vols., royal 8vo. 1871-2. Price 3*l.* 15*s.*, best law calf binding.

The subject of Life and Accidence Insurance has within a few years sprung into such absorbing interest in the Courts, that it has been thought that a collection of the Cases upon this branch of the law would prove acceptable.

These Cases decide interesting and important questions concerning Suicide, Insurable Interest, Restrictions upon Residence and Travel, Receipt of Premium after Forfeiture, Death in Known Violation of Law, &c.

Just published, in 8vo., price 21*s.*, cloth,

THE LAW AND PRACTICE UNDER THE COMPANIES ACTS,

1862, 1867, 1870;

THE LIFE ASSURANCE COMPANIES ACTS,

1870, 1871, 1872;

AND OTHER ACTS RELATING TO JOINT STOCK COMPANIES,

Together with Rules, Orders, and Forms, &c. &c. By HENRY B. BUCKLEY, M.A., of Lincoln's Inn, Esq., Barrister-at-Law, and Fellow of Christ's College, Cambridge.

"After a careful examination of the notes relating to many of the difficult and much-vexed questions arising upon the construction of this Act, we have formed a very favourable opinion of Mr. Buckley's qualifications for the task he has undertaken. . . . The whole book seems to us to be well and carefully executed.

"An excellent system of cross-references, placed at the foot of each section, adds greatly to the value of the book."—*Solicitors' Journal.*

EUROPEAN ARBITRATION.

In Parts, price 7*s.* 6*d.* each, sewed,

LORD WESTBURY'S DECISIONS.

Reported by FRANCIS S. REILLY, of Lincoln's Inn, Esq., Barrister-at-Law.

ALBERT ARBITRATION.

Now publishing in Parts, price 7*s.* 6*d.* each, sewed,

LORD CAIRNS'S DECISIONS.

Reported by FRANCIS S. REILLY, of Lincoln's Inn, Esq., Barrister-at-Law.

12mo. (1866), price 10*s.* 6*d.*, cloth,

A TREATISE ON THE GAME LAWS OF ENGLAND AND WALES:

Including Introduction, Statutes, Explanatory Notes, Cases, and Index. By JOHN LOCKE, Esq., M.P., Q.C., Recorder of Brighton. The Fifth Edition, in which are introduced the GAME LAWS of SCOTLAND and IRELAND. By GILMORE EVANS, Esq., of the Inner Temple, Barrister-at-Law.

In royal 8vo. (1867), price 10*s.* 6*d.*, cloth,

THE PRACTICE IN EQUITY BY WAY OF REVIVOR

AND SUPPLEMENT.

With Forms of Orders and Appendix of Bills.

By LOFTUS LEIGH PEMBERTON, Esq., of the Chancery Registrar's Office.

"Mr. Pemberton has, with great care, brought together and classified all these conflicting cases, and has, as far as may be, deduced principles which will probably be applied to future cases."—*Solicitors' Journal.*

In 8vo. (1847), price 14*s.*, cloth,

GREENLEAF'S EXAMINATION OF THE TESTIMONY OF THE EVANGELISTS

By the Rules of Evidence administered in Courts of Law; with the Harmony of the Four Gospels, arranged in four parallel columns, and a Synopsis of their Contents. To which is added, M. DUPIN'S REFUTATION OF JOSEPH SALVADOR'S TRIAL AND CONDEMNATION OF OUR SAVIOUR. Translated from the French by *Dr. PICKERING.*

ELECTION LAW.

A Manual of the Practice of Parliamentary Elections throughout Great Britain and Ireland. Comprising the Duties of Returning Officers and their Deputies, Town-Clerks, Agents, Poll-Clerks, &c., and the Law of Election Expenses, Corrupt Practices, and Illegal Payments. With an Appendix of Forms and Statutes, and a Copious Index. Third Edition. By HENRY JEFFREYS BUSHBY, Barrister-at-Law, Recorder of Colchester. 12mo. 1868. 7*s.* 6*d.*

"This is a manual intended for the use of returning officers and election agents, and is undoubtedly so written as to be as intelligible to laymen as to lawyers. It is convenient in form, and of comparatively moderate price." — *Solicitors' Journal.*

"Mr. Bushby embraces a larger field of inquiry, for he treats of bribery, and we may say, in justice to the learned author, that we think his fifth chapter, which treats of corrupt practices (bribery, treating, undue influence, illegal payments), a most valuable one, and one that we heartily recommend to every person engaged, either as candidate or as agent, in the conduct of an election, to study most carefully."—*Law Magazine.*

*** A Fourth Edition, edited by HENRY HARDCASTLE, Esq., adapted to and embodying the recent changes in the Law, is in preparation.

REPORTS OF THE DECISIONS OF THE JUDGES FOR THE TRIAL OF ELECTION PETITIONS IN ENGLAND AND IRELAND.

Pursuant to the Parliamentary Elections Act, 1868.

By EDWARD LOUGHLIN O'MALLEY, Esq., and HENRY HARDCASTLE, Esq., Barristers-at-Law.

Volume I., in Three Parts, royal 8vo., sewed, price 30*s.*, and Volume II., Part I., price 2*s.* 6*d.*

In 8vo., price 1*s.*, sewed,

LLOYD'S BONDS:

THEIR NATURE AND USES.

By HENRY JEFFERD TARRANT, of the Middle Temple, Barrister-at-Law.

In 280 pages, 8vo., price 10*s.* 6*d.*, cloth lettered,

A REPORT OF THE CASE OF

THE QUEEN v. *GURNEY AND OTHERS,*

In the Court of Queen's Bench before the Lord Chief Justice COCKBURN. With an Introduction, containing a History of the Case, and an Examination of the Cases at Law and Equity, applicable to it; or Illustrating THE DOCTRINE OF COMMERCIAL FRAUD. By W. F. FINLASON, Esq., Barrister-at-Law.

"It will probably be a very long time before the prosecution of the Overend and Gurney directors is forgotten. It remains as an example, and a legal precedent of considerable value. It involved the immensely important question where innocent misrepresentation ends, and where fraudulent misrepresentation begins.

"All who perused the report of this case in the columns of the *Times*, must have observed the remarkable fulness and accuracy with which that duty was discharged, and nothing could be more natural than that the reporter should publish a separate report in book form. This has been done, and Mr. Finlason introduces the report by one hundred pages of dissertation on the general law. To this we shall proceed to refer, simply remarking before doing so, that the charge to the jury has been carefully revised by the Lord Chief Justice." —*Law Times.*

In one vol., 8vo., pp. xiii, 782, price 35*s.*,

TRADE MARK CASES.

A Compilation of all the Reported Trade Mark Cases decided in the American Courts prior to the year 1871, with an Appendix containing the Leading English Cases, and the United States Act in relation to the Registration of Trade Marks, with constructions of the Commissioners of Patents affecting the same. Edited by ROWLAND COX, Counsellor at Law and Editor of the *American Law Times.*

BIBLIOTHECA LEGUM.

In 12mo. (320 pp.), price 2*s.*, cloth lettered,

A CATALOGUE OF LAW BOOKS,

Including all the Reports in the various Courts of England, Scotland, and Ireland; with a Supplement to December, 1872. By HENRY G. STEVENS and ROBERT W. HAYNES, Law Publishers and Booksellers; Exporters of Law and Miscellaneous Literature; Foreign and Colonial Literary Agents, &c. &c.

AN INDEX TO TEN THOUSAND PRECEDENTS.

In royal 8vo., price 28*s.*, cloth lettered,

INDEX TO PRECEDENTS IN CONVEYANCING,

AND TO

COMMON AND COMMERCIAL FORMS.

Arranged in Alphabetical order with Subdivisions of an Analytical Nature; together with an Appendix containing an Abstract of the Stamp Act, 1870, with a Schedule of Duties; the Regulations relative to, and the Stamp Duties payable on, Probates of Wills, Letters of Administration, Legacies, and Successions. By WALTER ARTHUR COPINGER, Esq., of the Middle Temple, Barrister-at-Law, Author of "The Law of Copyright in Works of Literature and Art."

"Mr. Copinger has not only designed an Index which cannot fail to be of practical use, but has successfully elaborated the work designed by combining a perspicuous order of arrangement with a most exhaustive table of contents, and most copious references to precedents. The Index is arranged in alphabetical order, with subdivisions of an analytical nature, the latter being made throughout subservient to the former.

"There is abundant choice of precedents given under the respective headings and sub-headings: for instance, there are thirteen references to different precedents for an agreement for an ordinary sale of freehold property, precedents of contracts for sale of freeholds, copyholds, leaseholds, mixed property, timber, and miscellaneous (being the analytical subdivisions of the heading 'Contract for Sale'), numbering together no less than 119. There are 1187 precedents referred to under the heading 'Wills.' *In toto* there are 110 works referred to, and over 10,000 precedents indexed, being forms not only of a modern character, but many belonging to earlier collections, and some framed under Acts of Parliament since repealed, and some virtually the effect of circumstances no longer necessitating a particular form of draft, which the author appears to us to have wisely thought proper to include where it has seemed to him that they may possibly prove of assistance to the conveyancer either as a precedent in connection with other matters, or as a guide in constructing an assurance or instrument under the altered state of the law.

"We cannot close this review of Mr. Copinger's publication better than with the apt quotation with which he inaugurates it: 'Knowledge is of two kinds; we know a subject ourselves, or we know where we can find information upon it.'"—*Law Journal.*

In 8vo., price 5*s.*, cloth,

THE LAW OF NEGLIGENCE,

Illustrated by the Recent Decisions of the Courts of the United Kingdom and America. By ROBERT CAMPBELL, Advocate of the Scotch Bar, and of Lincoln's Inn, Barrister-at-Law.

In this Essay, the Author reviews old principles in the light of recent decisions; combining the point of view of the practitioner—noting the latest phase of judicial opinion; with the attempt to digest and harmonize the law, so that (if possible) new decisions may seem to illustrate old and familiar principles, or that the extent and direction of the change introduced by each decision may be correctly estimated.

"I would also refer to some ingenious remarks as to the misapplication of the term '*gross negligence*,' which are to be found in a very good book—Campbell's Law of Negligence."—*Mr. Justice Willes in the case of "Oppenheim v. White Lion Hotel Co."*

"We presume from this being styled the first of a series of practical Law Tracts, that Mr. Campbell is about to devote his attention to other subjects, which, from the success of his first attempt, we shall expect to see him elucidate considerably. If, however, he should ever find time to expand this tract on the Law of Negligence into a complete treatise, we shall expect to find it one of the most satisfactory text-books on English law."—*Solicitors' Journal.*

Stevens and Haynes' Series of Reprints of the Early Reporters.

BELLEWE'S CASES, T. RICHARD II.

In 8vo., price 3*l.* 3*s.*, bound in calf antique,

LES ANS DU ROY RICHARD LE SECOND.

Collect' ensembl' hors les abridgments de Statham, Fitzherbert, et Brooke. Per RICHARD BELLEWE, de Lincolns Inne. 1585. Reprinted from the Original Edition.

"We have here a *fac-simile* edition of Bellewe, and it is really the most beautiful and admirable reprint that has appeared at any time. It is a perfect gem of antique printing, and forms a most interesting monument of our early legal history. It belongs to the same class of works as the Year Book of Edward I. and other similar works which have been printed in our own time under the auspices of the Master of the Rolls; but is far superior to any of them, and is in this respect highly creditable to the spirit and enterprise of private publishers. The work is an important link in our legal history; there are no year books of the reign of Richard II., and Bellewe supplied the only substitute by carefully extracting and collecting all the cases he could find, and he did it in the most convenient form—that of alphabetical arrangement in the order of subjects, so that the work is a digest as well as a book of law reports. It is in fact a collection of cases of the reign of Richard II., arranged according to their subjects in alphabetical order. It is, therefore, one of the most intelligible and interesting legal memorials of the Middle Ages."—*Law Times.*

CHOYCE CASES IN CHANCERY.

In 8vo., price 2*l.* 2*s.*, calf antique,

THE PRACTICE OF THE HIGH COURT OF CHANCERY.

With the Nature of the several Offices belonging to that Court. And the Reports of many Cases wherein Releif hath been there had, and where denyed.

CUNNINGHAM'S REPORTS.

In 8vo., price 3*l.* 3*s.*, calf antique,

CUNNINGHAM'S (T.) Reports in K. B., 7 to 10 Geo. II.; to which is prefixed a Proposal for rendering the Laws of England clear and certain, humbly offered to the Consideration of both Houses of Parliament. Third Edition, with numerous Corrections. By THOMAS TOWNSEND BUCKNILL, Barrister-at-Law.

In 8vo., price 3*l.* 3*s.*, calf antique,

SIR G. COOKE'S COMMON PLEAS REPORTS

In the Reigns of Queen Anne, and Kings George I. and II.

The Third Edition, with Additional Cases and References contained in the Notes taken from L. C. J. EYRE'S MSS. by Mr. Justice NARES, edited by THOMAS TOWNSEND BUCKNILL, of the Inner Temple, Barrister-at-Law.

BROOKE'S NEW CASES WITH MARCH'S TRANSLATION.

In 8vo., price 4*l.* 4*s.*, calf antique,

BROOKE'S (Sir Robert) New Cases in the time of Henry VIII., Edward VI., and Queen Mary, collected out of Brooke's Abridgment, and arranged under years with a table, together with MARCH'S (John) *Translation of* BROOKE'S New Cases in the time of Henry VIII., Edward VI., and Queen Mary, collected out of BROOKE'S Abridgment, and reduced alphabetically under their proper heads and titles, with a table of the principal matters. In one handsome volume. 8vo. 1873.

KELYNGE'S (W.) REPORTS.

In 8vo., price 4*l.* 4*s.*, calf antique,

KELYNGE'S (William) Report of Cases in Chancery, the King's Bench, &c., from the 3rd to the 9th year of His late Majesty King George II., during which time Lord King was Chancellor, and the Lords Raymond and Hardwicke were Chief Justices of England. To which are added, seventy New Cases not in the First Edition. Third Edition. In one handsome volume. 8vo. 1873.

Other Volumes are in Progress.

AMERICAN LAW WORKS

IMPORTED BY

STEVENS AND HAYNES.

Abbott's (B. V. & A.) Digest of the UNITED STATES REPORTS and ACTS of CONGRESS to MAY, 1872. 5 vols., royal 8vo. 9*l.*, bound.

Angell's Treatise on the Law of WATERCOURSES. Sixth Edition. Royal 8vo. 1869. 35*s.*, cloth.

Angell's Treatise on Limitations of ACTIONS at LAW. Fifth Edition. Royal 8vo. 1869. 31*s.* 6*d.*, cloth.

Bigelow's Treatise on Law of ESTOPPEL. 8vo. 1872. 31*s.* 6*d.* bound.

Bigelow's Overruled Cases. A Collection of Cases Overruled, Reversed, Denied, Doubted, Qualified, Limited, and Explained. 8vo.

Bishop on the Law relating to MARRIED WOMEN. 2 vols.

Bishop on the Law of Marriage AND DIVORCE. Fifth Edition. 2 vols., royal 8vo. 1873.

Bliss (G.). The Law of Life Insu- RANCE, with Chapters upon Accidents and Guarantee Insurance. Royal 8vo. 1872. 35*s.*, calf.

Brightly (F. C.). The Bankrupt Law of the UNITED STATES. Royal 8vo. 1869.

Browne (W. H.). A Treatise on the Law of TRADE MARKS and Analogous Subjects (Firm-Names, Business-Signs, Goodwill, Labels, &c.). Royal 8vo. 1873. 31*s.* 6*d.*

Cox (R.). American Trade Mark CASES. A compilation of all the reported Trade Mark Cases decided in the American Courts prior to the year 1871; with an Appendix containing the Leading English Cases. 8vo. 1871. 35*s.*, cloth.

Hanover (M. D.). A Practical TREATISE on the LAW of HORSES: embracing the Law of Bargain, Sale, and Warranty of Horses and other Live Stock; the Rule as to Unsoundness and Vice, &c. &c. 8vo. 1872. 15*s.*, bound.

Harrison (R. A.). The Common LAW PROCEDURE ACT; and other Acts relating to the Practice of the Superior Courts of Common Law in Canada. Second Edition. 8vo. 1870. 40*s.*

Hilliard (F.) The Law of New TRIALS, and other REHEARINGS; including Writs of Error, Appeals, &c. Second Edition. Royal 8vo. 1872. 35*s.*

Hilliard on the Law of Sales of PERSONAL PROPERTY. Third Edition. Royal 8vo. 1869. 31*s.* 6*d.*, cloth.

Houck (L.). A Treatise on the LAW of NAVIGABLE RIVERS. Royal 8vo. 1868. 14*s.*, cloth.

Langdell's Selection of Leading CASES on the LAW of CONTRACTS. With References and Citations. By C. C. LANGDELL, Dane Professor of Law in Harvard University. Vol. I. 8vo. 32*s.*, cloth.

Langdell's Selection of Leading CASES on the LAW of SALES of PERSONAL PROPERTY. With References and Citations. By C. C. LANGDELL, Dane Professor of Law in Harvard University. Vol. I. 8vo. 35*s.*, cloth.

Morse on Arbitration and Award. The Law of Arbitration and Award. By JOHN T. MORSE, Jr., Esq. 8vo. 35*s.*, cloth.

Parsons' (T.) Law of Shipping and the PRACTICE in ADMIRALTY. 2 vols., royal 8vo. 1869. 3*l.* 3*s.*, cloth.

Parsons' (T.) Law of Marine In- SURANCE and GENERAL AVERAGE. 2 vols., royal 8vo. 1868. 3*l.*, cloth.

Phillips' Law of Insurance. 5th Edition. 2 vols., royal 8vo. 1867. 63*s.*, cloth.

Rawle's Lecture on Equity. Deli- vered before the Law Academy of Philadelphia. Royal 8vo. 1868. 7*s.* 6*d.*

Redfield's Law of Carriers of Goods and PASSENGERS; also the Responsibility and Duty of Telegraph Companies and of Innkeepers, and the Law of Bailments. 8vo. 1869. 28*s.*, cloth.

Schouler (J.) on the Law of Do- MESTIC RELATIONS; embracing HUSBAND and WIFE, PARENT and CHILD, GUARDIAN and WARD, INFANCY, and MASTER and SERVANT. 1 vol., royal 8vo. 1870. 31*s.* 6*d.*

Shearman (T. G.) and Redfield's (A. A.) TREATISE on the LAW of NEGLIGENCE. Royal 8vo. Second Edition. 1870. 35*s.*, cloth.

Storer and Heard on the Nature, EVIDENCE, and LAW of CRIMINAL ABORTION. 8vo. 1868. 9*s.*, cloth.

Story's (Judge) Works—viz.:

——— COMMENTARIES on EQUITY JURISPRUDENCE. Tenth Edition. 2 vols., royal 8vo. 1870. A New Edition preparing.

——— ON BAILMENTS. Eighth Edition. By E. H. BENNETT, Esq. 31*s.* 6*d.*, cloth.

——— AGENCY. Seventh Edition. 1869. 31*s.* 6*d.*, cloth.

——— PARTNERSHIP. Sixth Edition. 1868. 31*s.* 6*d.*, cloth.

——— CONFLICT of LAWS. Seventh Edition. 1872. 35*s.*, cloth.

Story (W. W.) on the Law of Con- TRACTS. Fifth Edition. Revised and enlarged by E. H. BENNETT, Esq. 2 vols., 8vo.

The Civil Code of Lower Canada. Together with a Synopsis of Changes in the Law, References to the Reports of the Commissioners, &c., and a complete Index. By THOMAS MCCORD, Advocate. 12mo. 1870. 6*s.* 6*d.*

AMERICAN LAW WORKS—
CONTINUED.

The American Law Review. A Quarterly Journal of American Jurisprudence, &c. Price 6*s.* each number.

The Review is published quarterly,—each number containing two hundred or more pages, and presenting an exhaustive compendium of legal news for the previous quarter. The principal features are treatises upon practical or theoretical points of law, reports of leading cases, regular digests of the current series of English Reports and of the principal American cases from the courts of all the States, brief critical notices of new law-books, and in each number a "Summary of Events," where notes of decisions, legal intelligence, and professional gossip are grouped under local headings.

Throop (M. H.). A Treatise on the VALIDITY of VERBAL AGREEMENTS, as affected by the Legislative Enactments in England and the United States, commonly called the Statute of Frauds; including also the effect of Partial and Complete Performance and the sufficiency of the Writing in Cases where Verbal Agreements are not valid; together with other kindred matters; to which are prefixed transcripts of the various Statutes on the subject now in force in both Countries. By MONTGOMERY H. THROOP. (In 2 vols.) Vol. I., royal 8vo. 1870. 35*s.*, cloth.

Townshend's Treatise on the WRONGS called SLANDER and LIBEL, and on the Remedies for those Wrongs. By JOHN TOWNSHEND, Esq., of the New York Bar. Second Edition. 1872. 30*s.*, cloth.

Wharton (F.) A Treatise on Mental UNSOUNDNESS, embracing a general view of Psychological Law. Vol. I. Royal 8vo. 1873. 35*s.* law calf.
Vol. II. is in the press.

Wharton (F.). Conflict of Laws, or PRIVATE INTERNATIONAL LAW. Including a Comparative View of Anglo-American, Roman, German, and French Jurisprudence. Royal 8vo. 1872. 36*s.*, cloth.

Whiting (W.). War Powers under the CONSTITUTION of the UNITED STATES. With an Appendix of Cases. 8vo. 1871. 21*s.*, cloth.

Wilson's Digest of Parliamentary LAW. A Digest of Parliamentary Law. Also the Rules of Senate and House of Representatives of Congress; with the Constitution of the United States, the Amendments thereto, and their History. By O. M. WILSON, Esq. Second Edition. Demy 8vo. 10*s.*, cloth.

Zabriskie (James C.). The Public LAND LAWS of the UNITED STATES; with Instructions and Decisions appertaining thereto. One large vol., 8vo. 3*l.*, bound.

Now ready, Volumes I. to VI.,

The American Reports. Containing all Cases of General Value, decided by the Court of Last Resort in every State in the Union.—The Reports of the Courts of Last Resort of the several States contain cases of great general importance, and which are always considered as high authority by the Courts of the other States, but they are buried beneath a mass of practice and local cases of no value outside of the States in which they are decided.

In "The American Reports," the plan is to give all cases having a general value, hereafter decided by the Court of Last Resort in every State, unencumbered by Practice Cases and those of local importance only.

***** Any Works not in stock can be supplied (if in print) in a few weeks from date of order.**

NEW ZEALAND.

THE PRACTICAL STATUTES OF NEW ZEALAND.

Compiled by WALTER MONRO WILSON, Barrister-at-Law.
One vol., royal 8vo. 1867. Price 5*l.* 5*s.* bound.

CAPE OF GOOD HOPE.

BUCHANAN (J.), Reports of Cases decided in the Supreme Court of the Cape of Good Hope. Vols. I. & II. 1868–69. Royal 8vo. 25*s.* each.

——— Vol. III., parts i. to iv. 1870. 10*s.*

MENZIES' (W.), Reports of Cases decided in the Supreme Court of the Cape of Good Hope. Vol. I. and Vol. II., parts i. to iv. £5.

In 12mo., price 10*s.* 6*d.*,

VAN DER KEESEL (D. G.) SELECT THESES ON THE LAWS OF HOLLAND AND ZEELAND.

Being a Commentary of Hugo Grotius' Introduction to Dutch Jurisprudence, and intended to supply certain defects therein, and to determine some of the more celebrated Controversies on the Law of Holland. Translated by C. A. LORENZ, of Lincoln's Inn, Barrister-at-Law. Second Edition, with a Biographical Notice of the Author by Professor J. DE WAL, of Leyden.

LEADING CASES.

LEADING CASES ON MERCANTILE LAW.

Fifth Edition. Enlarged and Improved.

BEING SELECT DECISIONS OF AMERICAN COURTS, WITH ESPECIAL REFERENCE TO MERCANTILE LAW, WITH NOTES.

The whole Work has been thoroughly revised, and largely increased by the introduction of several entirely new heads of practical interest, by Hon. J. I. C. HARE and JNO. WM. WALLACE, Esq. In 2 vols., 8vo., of nearly 1000 pages each. Price 3*l.* 15*s.*, law calf.

Among the many Subjects treated of and fully illustrated in this Edition are—

Conveyances, Voluntary and Fraudulent.
Slander and Libel, including the question of Mercantile Agencies.
Infancy.
Application of Payments.
Bills and Notes.
Form, Time, and Mode of Communicating Notice of Dishonor.
Negotiability of Instruments, including the subject of Coupon Bonds, &c.
Power of one Partner to bind the Firm.
Real Estate held by a Commercial Partnership.
Apportionment and Termination of Powers of Agents.
Principal and Factor.
Domicile.
Guaranty.
Antecedent Debt.
Discharge of Surety.
Revocation of Wills.
License.
Judgment of other States.
Abandonment.
Constructive and Total Loss.
Insurable Interest and Forfeiture of Policy, &c. &c.

Royal 8vo., Vol. I., price 35*s.*, cloth,

LEADING CASES ON SALES.

A Selection of Cases on the Law of Sales of Personal Property. With References and Citations. By C. C. LANGDELL, Dane Professor of Law in Harvard University.

"We have before noticed Professor Langdell's Selection of Cases on the Law of Contracts. The present work is on the same plan.

"For those students who desire to know what the fundamental principles of law are, and the method in which they have been worked out and applied, we know no work to which we would sooner recommend them.

"We have said that these books were mainly intended to be useful to students; but if there are any practising lawyers who still have the time and taste to 'read law,' we can promise them that they will find no legal study more delightful than that of tracing the history of opinion through the pages of these books. . . . To understand fully how good these books are, the reader must be a pretty good lawyer himself."—*American Law Review.*

Royal 8vo., Vol. I., price 32*s.*, cloth,

A SELECTION OF CASES ON THE LAW OF CONTRACTS.

With References and Citations. By C. C. LANGDELL, Dane Professor of Law in Harvard University.

"The design of this work is both novel and good."—*Solicitors' Journal.*

"Mr. Langdell has rummaged the vast libraries of English, Scotch, Irish, American, and even of French Law, in order that he might present their jewels to his pupils."—*Law Journal.*

STEVENS AND HAYNES,

LAW PUBLISHERS, BOOKSELLERS AND EXPORTERS,
BELL YARD, TEMPLE BAR, LONDON, W.C.

Books Bound in every style of Binding.

WORKS IN ALL CLASSES OF LITERATURE SUPPLIED TO ORDER.

FOREIGN BOOKS IMPORTED.

LIBRARIES VALUED OR PURCHASED.

Catalogues and Estimates Furnished, and Orders Promptly Executed.

S. & H. have a large Stock of Second-hand Law Reports in superior condition.

STEVENS AND HAYNES, BELL YARD.

AN INDEX TO TEN THOUSAND PRECEDENTS

INDEX TO PRECEDENTS IN CONVEYANCING,

THE LAW OF COPYRIGHT,

A TREATISE ON THE VALIDITY OF VERBAL

REPORT ON

THE CASE OF THE QUEEN v. GURNEY AND OTHERS

LATHAM AND SPICE ON LIMITED LIABILITY & WINDING-UP OF COMPANIES

A TREATISE ON THE COMPANIES ACT, 1867;

CASES AND OPINIONS ON CONSTITUTIONAL LAW,

STEVENS AND HAYNES, BELL YARD.

A TREATISE ON THE STATUTES OF ELIZABETH

THE LAW OF NEGLIGENCE.

THE LAW OF SALVAGE.

THE LAW OF RAILWAY COMPANIES.

A TREATISE UPON THE LAW OF EXTRADITION.

PRINCIPLES OF THE LAW OF STOPPAGE IN TRANSITU, RETENTION, AND DELIVERY.

THE CHARITABLE TRUSTS ACTS, 1853, 1855, 1860;

THE LAW OF COMPENSATION FOR LANDS, HOUSES,